United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL 74-1227

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P1S

United States Court of Appeals

For the Second Circuit.

In the Matter of Honorable Lee P. Gagliardi, United States District Judge for the Southern District of New York,

Petitioner-Appellee,

Evelyn Williams, Esq.,

Respondent-Appellant,

U.S.A.,

Plaintiff,

v.

JoAnne Chesimard, et. al., Defendants.

On Appeal From The United States District Court For The Southern District Of New York

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APPELLANT'S APPENDIX

Attorneys for Appellant, Evelyn Williams

William M. Kunstler
Center for Constitutional Rights
853 Broadway
New York, N.Y. 10003

(Other Appearances on Inside)

UNITED STATES COURT OF APPEALS
FILED
APR 15 1974
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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To be argued by:
Professor LeRoy Clark
New York University
40 Washington Square South
New York, N.Y.

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

73 CRIL 572

J. S. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

vs.

JOANNE CHESIMARD
FREDDIE HILTON, a/k/a Jamol
AVON WHITE, a/k/a George

ATTORNEYS

For U. S.:

John H. Gross, AUSA
(212)264-6443

For Defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
(01)						
J.S. 2 mailed	Clerk					
J.S. 3 mailed	Marshal					
Violation	Docket fee					
Title 18						
Sec. 2113(a)2113(d)&2 371. Bank robbery by used of dangerous weapons.(2-3) Conspiracy so to do.(1) (Three Counts)						

FILED
FEB 15 1974
UNITED STATES COURT OF APPEALS

DATE	PROCEEDINGS
6-13-73	Filed indictment. (Related to 73 Cr. 1292)

DOCKET ENTRIES

6/13/73	Filed Indictment
6/18/73	Defendant Pleads not guilty. 10 days for motions Deft. remanded in lieu of bail fixed at $250,000. J. Chesimard - No appearance. A. White - No appearance
6-25-73	Case marked off Part I Calendar, Wyatt, J.
7-27-73	J. Chesimard - Filed affdvt. for a writ
8-1-73	J. Chesimard - Deft. & Atty. presented, produced on writ. Pleads not guilty. 10 days for motions. Bail fixed at $50,000. Remanded. Ordered fingerprinted and photographed adjd without date ...Ward, J.

PROCEEDINGS

	Filed Govt's notice of readiness for trial.
	JOANNE CHESIMARD, filed true copy of writ of habeas corpus ad prosequendum. Writ satisfied 8-1-73 Ward, J.
-73 •	Filed ORDER -hat a joint confernece between Joanne Chesimard & Freddie Hilton be arranged, etc. WARD, J. mn
7-9-73 •	JOANNE CHESIMARD- filed true copy of writ of habeas corpus ad prosequendum, and marshal's return of service of writ on 7-31-73.
8-17-73 •	Filed true copy of order permitting join conference and marshal's return of same on 8-8-73.
9-24-73 •	JO ANNE CHESIMARD- filed notice of appearance by Evelyn Williams, Esq. 461 C. Pk West, NYC 866-6641.
9-26-73	AVON WHITE (atty present) (John Curley, Esq. present for pleading and bail application only) Deft produced on a writ. Deft pleads not guilty. Bail fixed in sum of $150,000. cash or surety. Deft. orde fingerprinted and photographed. Writ satisfied. Gagliardi, J.
10-1-73	Filed Govt's affdvt in opposition to deft Hilton's oral motion dtd 9-26-73 frn severance.
9-24-73 •	Filed Govt's affdvt (AVON WHITE) for writ of habeas corpus ad pros. Ret. 9-26-73.
10-2-73.	AVON WHITE- filed Govt's affdvt for writ of habeas corpus ad pros. Ret: 10-2-73.
10-2-73.	Filed Govt's affdvt for writ of habeas corpus ad testificandum against Eleanor Brown ret. 10-5-73.
Oc 12-73 •	Filed A. WHITE- filed affdvt for writ of habeas corpus ad pros. ret: 10-17-73.
10-15-73.	Filed affdvt of writ of habeas corpus ad pros. for deft Avon White. Writ satisfied. 9-26-73 Gagliardi, J.
10-29-73 •	Filed affdvt of writ of habeas corpus ad testificandum for Eleanor Br Writ satisfied 10-5-73. Gagliardi, J.
10-29-73 •	Filed affdvt of writ of habeas corpus ad pros. for Avon White. Writ satisfied 10-17-73. Gagliardi, J.
10-29-73 •	Filed affdvt for writ of habeas corpus ad pros. for Avon White. Writ satisfied 10-5-73. Gagliardi, J.
11-26-73 •	A. WHITE- filed Govt's affdvt for writ of habeas corpus ad pros. issued writ ret: 11-27-73.

cont'd on next page

FEB 15 1974

Judge Gagliardi

Civil Docket Continuation

DATE	PROCEEDINGS
11-28-73	JOANNE CHESIMARD, filed affdvt for writ of habeas corpus ad pros. Ret: 11-28-73.
11-30-73	JOANNE CHESIMARD, filed notice of appeal from order dtd 11-28-73. Copies sent to: Evelyn A. Williams & U.S. Atty Truebner.
12-7-73	ORDER filed permitting examination of deft J. Chesimard by her privately retained physician at the Hospital located on Rikers Island. Gagliardi,J.
12-11-73	Filed ORDER that the U.S. Marshalls transport the deft from her place of incarceration to the U.S. Court House, Foley Sq,NYC employing only such force as is reasonably necessary to accomplish her prompt appearance for trial. Gagliardi,J. mn
12-14-73	JOANNE CHESIMARD-filed CJA form 20 appointment of counsel, Howard L. Jacobs, 401 Bway,NYC 431-3710. mn
12-12-73	Filed true copy of order of U.S.C.A. and Opinion, Ordered that the petitions for writ of mandamus are denied on the authority of Stans ex. Gagliardi, Slip op. 1(2nd Cirp 9-11-73) Waterman,Feinberg,Gurfein.mn
12-18-73	EVELYN WILLIAMS, counsel for deft J. Chesimard - Certificate of contempt filed against Ms. Willaims for her conduct during the trial of this action...Accordingly, it is adjudged that Ms. Willaims is guilty of the Criminal contempt hereinafter described... Gagliardi,J. mn
12-17-73	JOANNE CHESIMARD and FREDDIE HILTON - Pretrial conference held; trial adjourned to 12-18-73 HAUMAN,J.
12-18-73	JOANNE CHESIMARD;) Jury trial begun. Joanne Chesimard, Avon White and FREDDIE HILTON ;) John Rivers produced on writs HAUMAN,J.
12-18-73	Trial cont'd. Florynce R. Kennedy, Esq. appointed as counsel for deft. Chesimard.
12-19-73	Trial cont'd.
12-20-73	" "
12-21-73	" "
12-24-73	" "
12-26-73	" "
12-27-73	" "
12-28-73	" " and concluded. Jury finds Joanne Chesimard and Freddie Hilton Not Guilty. HAUMAN,J.
11-27-73	Avon White- deft produced on a writ. Deft withdraws plea of not guilty and pleads guilty to count 2 only. Pre-sentence investigation ordered for sentence 1-15-74 at 9:30AM. Deft remanded, no bail. Writ mjd'd to 11-28-73. Gagliardi,J.
12-10-73	Before Gagliardi,J. - Jury trial begun. Deft Chesimard produced on wri
12-11-73	Trial cont'd- Deft Chesimard, produced on a writ. Witness Avon White and witness John Rivers produced on a writ.

...cont'd on next page

UNITED STATES COURT OF APPEALS FEB 13 1974

5 Crim. 572 Judge Gagliardi USA -v- JOANNE CH

DATE	PROCEEDINGS	Date Order or Judgment Noted
-12-73	Trial cont'd. Deft Chesimard produced on a writ. Jury sequested.	
-13-73	Trial cont'd. Deft Chesimard produced on a writ.	
-14-73	Trial cont'd Deft Chesimard produced on a wirt. Trial concluded. Court declairs a mistrial. Deft Chesimard, writ satisfied. Avon White, writ satisfied, John Rivers, writ satisfied. Gagliardi, J.	
-14-731	AVON WHITE - Filed affdvt. for W/H/C Ad Pros. Ret. 12-17-73.	
1-3-74	In Re EVELYN WILLIAMS - Filed MEMO OF Law inopposition to judgment of contempt.	
1-3-74	EVELYN WILLIAMS - Filed motion to set aside and vacate certificate of contempt.	
1-8-74	Filed MEMO DECISION # 40159: *** On Dec.18-73, respondent WILLIAMS appeared before the court for sentencing; at that time respondent was served with a copy of the formal certificate of contempt. At that hearing respondent moved for an order assigning the contempt charge to another judge for the purposes of a jury trial pursuant to Rule 42(b), *** *** Accordingly, the instant motion is denied. So Ordered. GAGLIARDI,J. (Attys. notified)	
1-10-74	Re: U.S.A. ex rel. [illegible] v. [illegible] WILLIAMS, ESQ: Filed respondent's Notice of Appeal from judgment of conviction entered and filed on January 3, 1974. m/n	
2-5-74	Filed Judgment & Commitment Re: Evelyn Williams Esq by Judge Gagliardi	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature]
Deputy Clerk

UNITED STATES COURT OF APPEALS
FILED
FEB 15 1974
SECOND CIRCUIT

JHG:jj

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA

- v -

JOANNE CHESIMARD, FREDDIE HILTON a/k/a Jamal and AVON WHITE a/k/a George,

Defendants.

- -x

INDICTMENT

73 Cr. 572

Filed 6-13-73

The Grand Jury charges:

1. From on or about the 1st day of September, 1972, up to and including the 30th day of October, 1972, in the Southern District of New York and elsewhere, JOANNE CHESIMARD, FREDDIE HILTON a/k/a Jamal and AVON WHITE a/k/a George named as defendants herein together with Louis Chesimard, Paul Stewart a/k/a Eric, John Rivers, Woodie Green a/k/a Frank and an individual known only as Reese, all of whom are named as co-conspirators but not as defendants herein, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury unknown to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Section 2113(a).

2. It was a part of the said conspiracy that the said defendants together with the co-conspirators would unlawfully, wilfully and knowingly, by force, violence and intimidation, take and attempt to take from the person and presence of another, property and money belonging to and in the care, custody, control, management and possession of the Manufacturers Hanover Trust Company, 1355 Oak Point Avenue, Bronx, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

OVERT ACTS

In furtherance of the said conspiracy, and to effect the objects thereof, the following acts, among others, were committed in the Southern District of New York:

JHG:JJ

1. On or about September 28, 1972, the defendants JOANNE CHESIMARD, FREDDIE HILTON a/k/a Jamal and AVON WHITE a/k/a George met in an apartment at 1530 Jessup Avenue, Bronx, New York and planned the robbery of the Manufacturers Hanover Trust Company a bank located at 1355 Oak Point Avenue, Bronx, New York.

2. On or about September 29, 1972 JOANNE CHESIMARD, FREDDIE HILTON a/k/a Jamal, and AVON WHITE a/k/a George the defendants and John Rivers, Woodie Green a/k/a Frank and Reese entered a truck and drove to the vicinity of the Manufacturers Hanover Trust Company, 1355 Oak Point Avenue, Bronx, New York.

3. On or about September 29, 1972 JOANNE CHESIMARD, AVON WHITE a/k/a George the defendants and Woodie Green a/k/a Frank and John Rivers and Reese entered the Manufacturers Hanover Trust Company, 1355 Oak Point Avenue, Bronx, New York, carrying weapons.

4. On or about September 29, 1972 Woodie Green a/k/a Frank took approximately $3,700.00 from a bank teller's drawer and put it in a bag he was carrying.

5. On or about September 29, 1972 JOANNE CHESIMARD and AVON WHITE a/k/a George, the defendants and Woodie Green a/k/a Frank, John Rivers and Reese exited the Manufacturers Hanover Trust Company, Bronx, New York and entered the truck driven by the defendant FREDDIE HILTON, a/k/a Jamal.

6. On or about September 29, 1972 FREDDIE HILTON a/k/a Jamal drove the truck and its occupants away from the vicinity of the Manufacturers Hanover Trust Company.

(Title 18, United States Code, Section 371.)

COUNT II

The Grand Jury further charges:

On or about the 29th day of September, 1972, in the Southern District of New York, JOANNE CHESIMARD, FREDDIE HILTON a/k/a Jamal and AVON WHITE a/k/a George, the defendants, unlawfully, wilfully and knowingly by force, violence and intimidation, did take and attempt to take from the person and presence of another, property and money in the approximate

JHG:JJ

amount of thirty-seven hundred dollars ($3,700.00) which then belonged to and was in the care, custody, control, management and possession of the Manufacturers Hanover Trust Company, 1355 Oak Point Avenue, Bronx,, New York, a bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Section 2113(a) and 2.)

COUNT III

The Grand Jury further charges.

On or about the 29th day of September, 1972, in the Southern District of New York, JOANNE CHESIMARD, FREDDIE HILTON a/k/a Jamal and AVON WHITE a/k/a George, the defendants, in committting the offense alleged in the second count of this Indictment, all allegations of which are incorporated herein by reference, unlawfully, wilfully and knowingly did assault and put in jeopardy the lives of persons, including but not limited to tellers, employees and customers of the Manufacturers Hanover Trust Company, 1355 Oak Point Avenue, Bronx, New York, by the use of dangerous weapons and devices, to wit, firearms.

(Title 18, United States Code, Section 2113(d) and 2.)

Mrs. Irene M Burke
Foreman

PAUL J. CURRAN
United States Attorney

PLT:wp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
Nov 28 10 15 AM '73
S.D. OF N.Y.

UNITED STATES OF AMERICA :

-v- : AFFIDAVIT

JOANNE CHESIMARD, et al., : 73 Cr. 572 (LPG)

Defendant :

STATE OF NEW YORK)
COUNTY OF NEW YORK : SS.:
SOUTHERN DISTRICT OF NEW YORK)

Ret. 11/28/73 2:00 P.M.

PETER L. TRUEBNER, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York; that he has charge of the prosecution of the above named case; that the defendant Joanne Chesimard, has been indicted by the Grand Jury for the Southern District of New York for the unlawful robbery of a federally insured bank and conspiracy to do so in violation of Title 18, United States Code, Sections 371, 2113(a) and 2113(d).

The indictment was filed in the United States District Court for the Southern District of New York on June 13, 1973.

The defendant is now confined in Middlesex County Workhouse, New Brunswick, New Jersey, on a charge of violating New Jersey State Homicide and Weapons Laws and her confinement will terminate after disposition of the cases now pending against her.

PT :wp

That the case is now on the calendar of the United States District Court for the Southern District of New York for trial and it is necessary that the defendant appear and stand trial on Indictment 73 Cr. 572.

WHEREFORE, your deponent respectfully prays that a writ of habeas corpus ad prosequendum issue, directing the Warden of the Middlesex County Workhouse New Brunswick, New Jersey, and the United States Marshal for the Southern District of New York to produce the above named defendant in the United States District Court for the Southern District of New York, United States Court House, Foley Square, New York, N.Y., on November 28, 1973, and after the said defendant has been discharged or convicted and sentenced on said indictment, to return him to the Middlesex County Workhouse, New Brunswick, New Jersey.

PETER L. TRUEBNER
Assistant United States Attorney

Sworn to before me this
28th day of November, 1973.

JOSEPH [illegible]
NOTARY PUBLIC, State of New York
No. 31 [illegible]
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES COURT OF APPEALS
For the Second Circuit

- -

JOANNE CHESIMARD,

Petitioner,

-against-

HON. LEE P. GAGLIARDI, United States District Judge, and the UNITED STATES OF AMERICA,

Respondents.

73 CR. 572
GAGLIARDI J

FILED
DEC 12 10 09 AM '73
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

-against-

JOANNE CHESIMARD, FREDDIE HILTON and AVON WHITE,

Defendants.

- -

Petitions for a writ of mandamus and/or prohibition having been filed by Joanne Chesimard and Freddie Hilton together with a motion for a stay,

Upon consideration thereof, it is

Ordered that said petitions be and they hereby are denied on the authority of Stano v. Gagliardi, slip op. 1 (2d Cir. Sept. 11, 1973).

Sterry R. Waterman

Sterry R. Waterman

Wilfred Feinberg

Wilfred Feinberg, U.S.C.J.J.

17

Murray I. Gurfein

Murray I. Gurfein, U.S.D.J.

December 3, 1973

A true copy.
R. Hall Jamison Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

73 CR.572

UNITED STATES OF AMERICA :

-v- :

NOTICE OF APPEAL

JOANNE CHESIMARD, :
FREDDIE HILTON a/k/a/ Jamal
and AVON WHITE a/k/a George, :

Defendants. :

----------X

NOV 29 2 29 PM '73

Notice is hereby given that JOANNE CHESIMARD, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from from the order of Hon. Lee P. Gagliardi made on the 28th day of November, 1973 which set the trial date in this action on the 3rd day of December, 1973.

DATED: November 29, 1972

EVELYN A. WILLIAMS
Office and P.O. Address
401 Central Park West
New York City, New York
(212) 866-6641

Attorney for JOANNE CHESIMARD

To! Defendant-Appellee
JoAnne Chesimard
Womens Detention Facility
Rikers Island, NYC

To! Peter Truebner
US Attorneys
Southern District
State of New York

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

File Number 73-2144

JOANNE CHESIMARD,

Petitioner,

-v-

HON. LEE P. GAGLIARDI, United States District Judge and the UNITED STATES OF AMERICA,

Respondents.

73 Cr. 572

ORDER TO SHOW CAUSE FOR A WRIT OF MANDAMUS OR OF PROHIBITION AND AN ORDER FOR A STAY OF THE ORDER OF HON. LEE P. GAGLIARDI PENDING SUCH DETERMINATION.

Upon the annexed affidavit of EVELYN A. WILLIAMS, attorney for the Petitioner- Defendant, JOANNE CHESIMARD, sworn to on the 30th day of November, 1973, and the exhibits attached thereto, it is

ORDERED, that the Respondents, Hon LEE P. GAGLIARDI and the UNITED STATES OF AMERICA, show cause at a Motion Term of this Court, to be held in Room 706, United States Court House, Foley Square, City, County and State of New York, on the 3rd day of December, 1973 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made herein, pursuant to Rule 21(a) of the Federal Rules of Criminal Appellate Procedure and Rule 8 (a) of the Federal Rules of the Federal Rules of Criminal Appellate Procedure, directing that the application for a Writ of Mandamus or of Prohibition be granted; and it is further

ORDERED, that the personal service of a copy of this order and of the papers upon which it is granted on the said HON. LEE P. GAGLIARDI and the UNITED STATES OF AMERICA on or before November 30, 1973, shall be sufficient service of this order; and it Is further

ORDERED, that, until the hearing and determination of this motion and the entry of an order thereon, all proceedings in this action be and the same hereby are stayed.

DATED: November 30, 1973

Leonard B. Sand

EVELYN A. WILLIAMS
Office and P.O. Address
461 Central Park West
New York, N.Y. 10025
(212) 866-6641
Attorney for Defendant
Chesimard.

PETITION, BY ORDER TO SHOW CAUSE, FOR A WRIT OF MANDAMUS OR OF PROHIBITION AND AN ORDER FOR STAY OF HON. LEE P. GAGLIARDI'S ORDER PENDING SUCH DETERMINATION

JURISDICTION

1. Notice of Appeal from HON. LEE P. GAGLIARDI'S order made on the 28th day of November, 1973, setting the above-captioned action for trial on the 3rd day of December, 1973 has been filed in accordance with Rule 4(b) of the Federal Rules of Criminal Procedure.

2. That the application for a stay of the above-mentioned order has been made in accordance with Rule 8(a) of the Federal Rules of Appellate Procedure.

3. That this motion is presented directly to the Court of Appeals because, as evidenced by Exhibit "E", attached to this motion, the District Court has denied Defendant's motion for an adjournment and, therefore, further application to the District Court is not practicable.

4. Because of the exceptional circumstances herein involved, primarily an Order requiring readiness for trial on a Two day notice, that Order having been made on the 28th day of November, 1973 order a trial date of December in spite of the circumstances explained to the District Court and further amplified by exhibits attached to this motion, in compliance with Rule 8 of the Federal Rules of Appellate Procedure, and in consideration of guarantees afforded by the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, it is requested that this application be made to and be considered by a single judge of the court.

5. That because the defendant CHESIMARD is actually on trial in the State of New Jersey (see Exhibits "A", "B", "C", and "D") that the order from which defendant CHESIMARD appeals is justified under Rule 21, of the Federal Rules of Appellate Procedure for this petition for an "Extroadinary Writ".

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

JOANNE CHESIMARD,

Petitioner,

-v-

HON. LEE P. GAGLIARDI, United States District Judge and the UNITED STATES OF AMERICA,

Respondents.

----------X

File Number_____

73 Cr. 572

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE FOR A WRIT OF MANDAMUS OR OF A PROHIBITION AND AN ORDER FOR A STAY .

EVELYN A. WILLIAMS, being duly sworn, deposes and states:

1. I am the attorney for the defendant, JOANNE CHESIMARD, both in the State of New Jersey and the United States District Court: Southern District of New York.

2. Defendant CHESIMARD was arrested in the State of New Jersey on May 2, 1973. An indictment was returned on the 11th day of May, 1973, consisting of Eight Counts, Two of which consist of murder; One of Assault with Intention to Kill; Three counts of atrocious assault; One count of illegal possession of weapons and One count of Armed Robbery. This indictment is attached herein and made a part of this motion, "Exhibit A".

3. Defendant CHESIMARD has been denied bail by the Superior Court of New Jersey located in Middlesex County, New Brunswick.

4. As the result of critical injuries sustained by defendant CHESIMARD on May 2nd, 1973, she was hospitalized from that date until June 4th, 1973 at which time she was realeased from Roosevelt Hospital, Menlo Park, New Jersey, and remanded to the Middlesex County Workhouse awaiting trial.

5. The Jersey trial began on the 9th day of October, 1973 in the New Jersey Superior Court, Middlesex County.

6. On August 1st, 1973, defendant CHESIMARD, by process of a Writ of Habeas Corpus Ad Prosequendum, was arraigned before the United States District Court: Southern District: State of New York and her plea of not guilty to said indictment, No. 73 Cr. 572, was entered before HON. LEE P. GAGLIARDI. Said indictment charged her, together with Two co-defendants, FREDDIE HILTON and AVON WHITE, (who was at that time not apprehended), with armed robbery of a Federally insured bank; conspiracy to rob said bank and assault by the use of dangerous weapons.

7. On August 1st, 1973, I advised Hon. LEE P. GAGLIARDI that I was the attorney for the defendant CHESIMARD in the New Jersey case and that trial had been set for October 9, 1973. My application for a postponement of the within case, made before JUDGE GAGLIARDI on that date was granted and his decision, at that time, was to postpone the instant case until the termination of the New Jersey Trial, assuming the New Jersey trial would, in fact, commence on the 9th day of October, 1973.

8. During a Pre-Trial Conference before JUDGE GAGLIARDI, on the 26th day of September, 1973, Defendant CHESIMARD renewed her application for postponement of the Southern District case until completion of the New Jersey case. Said application was granted by JUDGE GAGLIARDI, on condition that the trial in New Jersey would, in fact, begin on the 9th day of October, 1973, the precise date being unascertainable because of the multitudinous pre-trial motions pending before the Superior Court of Middlesex County, among which was a motion for a change of venue from Middlesex County which was denied on the 1st day of October, 1973.

9. In a letter, dated September 28, 1973, addressed to JUDGE GAGLIARDI, a copy of which was mailed to JOHN GROSS, Assistant United States Attorney, I advised JUDGE GAGLIARDI that the New Jersey trial would begin on the 9th day of October, 1973, and again renewed my application for postponement of the instant action until the completion of the Jersey case. (Exhibit I

10. Jury selection did begin in the Superior Court of the State of New Jersey, Middlesex County on the 9th day of October, 1973.

11. Because of the inability to seat impartial jurors, the entire panel consisting of 650 potential jurors were discharged and on the 23rd day of October, 1973 a renewed application for change of venue made by the defendant Chesimard, was granted, the ordersigned by HON. LEON GEROFSKY and entered on the 1st day of November, 1973. The Order, herein attached and made a part of this motion, ordered a change of venue from Middlesex County to Morris County, State of New Jersey. As indicated in the Order, Jury Selection from impaneled jurors of Morris County begins on January 2nd, 1973.

12. DEFENDANT CHESIMARD has filed objection to the choice of the County in New Jersey to which the venue was changed and motions are being prepared in relation to that order.

13. On November 28th, 1973, over defense counsel objection, JUDGE GAGLIARDI ordered trial of the Southern District Court indictment to begin on the 3rd day of December, 1973; ordered the return of defendant CHESIMARD to the State of New York on the 28th day of November, 1973 at which time she was so returned and remanded pending trial in the instant case. (Attached to and made a part of this motion are the minutes of the hearing conducted by JUDGE GAGLIARDI on the 28th day of November, 1973, Exhibit "E")

14. Implicit in the ruling of JUDGE GAGLIARDI is his attempt to comply with the Southern District of New York "Plan for Achieving Prompt Disposition of Criminal Cases," which superceded the Second Circuit Rules for the same purpose, effective April 1st, 1973, see Hilbert v. Dooling 476 F 2nd 355 (2d Cir. 1973) In Hilbert v. Dooling, however, there is specific provisions for the exclusion of certain periods of time within which said rules must be complied with, specifically Rule 5(b) (defendant CHESIMARD HAS Requested, and, in fact, been granted, a continuance of this case to allow and permit determination of the New Jersey case. It is inconceivable that, regardless of the Rules of the Second Circuit that all of the Constitutional rights of the defendant CHESIMARD must be abrogated by JUDGE GAGLIARDI'S decision. Arguments addressed to the inability of any defendant to adequately prepare a defense, simultaneously, in relation to more than one indictment at a time, need not be substantiated. The administration of justice must be a reality, not a hypothetical possibility.

15. As indicated above, defendant CHESIMARD has been remanded without bail in the State of New Jersey. In addition to the present indictment she has been indicted in the Eastern District of the State of New York, the charge being Bankrobbery and Felony-Murder as well as Kidnapping and robbery in the County of Kings, State of New York. She has not yet been arraigned in Kings County.

16. the HON. LEE P. GAGLIARDI is aware of the circumstances

spelled out in Paragraph 15 of this affidavit.

17. It is my contention that JUDGE GAGLIARDI'S Order of November 28th, 1973 is not only an abuse of discretion but a complete disregard for the system of justice or the constitutional guarantees afforded every defendant under the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

18. It is also clear that JUDGE GAGLIARDI'S Order is not only unresponsive to the legal merits of defendant CHESIMARD'S application, but is, in fact, representative of the kind of oppressive, indifferent attitude toward those criminally indicted which, of necessity, indicates an exclusion of the presumption of innocence and, in its place, substitutes the presumption of guilt.

19. As indicated in the minutes of the hearing before JUDGE GAGLIARDI on the 28th day of November, 1973, because of the seriousness of the indictment against defendant CHESIMARD that innumerable motions before the Jersey Court have been necessary, as well as in-depth defense investigatory efforts which have been so consuming of defense counsels' time, that it has not been possible to adequately prepare the defense needed in this case. Certainly defense counsel, at the very least, was justified in believing JUDGE GAGLIARDI'S decision that the instant case would be postponed until the termination of the Jersey case.

WHEREFORE, for the foregoing reasons, it is respectfully prayed and urged that defendant CHESIMARD'S application and motion for the vacation of JUDGE GAGLIARDI'S order which set her trial in this case for December 3, 1973, and that this case commence at the termination of the New Jersey Case.

EVELYN A. WILLIAMS
Attorney for defendant
CHESIMARD

Sworn to before me
this 30th day of
November, 1973.

EXHIBIT "A" 18a

MIDDLESEX COUNTY COURT

NOTICE

File No. 73-1133 det. Bott.

THE STATE
vs.
JOANNE DEBORAH CHESIMARD
Deft.

☐ Plea to Indictment
☐ Plea to Accusation
☐ Change of Plea

Murder, Felony murder, Atrocious assault & battery, Assault & battery upon police officer, Assault w/a dangerous weapon, Assault w/i to kill, Illegal possession of weapon and Armed robbery

To JOANNE DEBORAH CHESIMARD, MIDDLESEX GENERAL HOSPITAL, NEW BRUNSWICK, N.J.

You MUST APPEAR in the Middlesex County Sheriffs Office, Bayard Street, New Brunswick, N. J., on the 21st day of May, 1973, at 9:00 o'clock in the forenoon, PRIOR to your appearance in Court, for a plea in the above matter.

Court Rule 8:5-2 requires that if you intend to plead Guilty, the enclosed statement, Form 13-A, must be executed by you, and witnessed, and returned to this office prior to the day of such plea of Guilty.

Enclosed you will find a copy of Indictment.

Dated May 11, 1973.

it.

John S. Kuhlthau, County Prosecutor

MURDER -
FELONY MURDER -
ATROCIOUS ASSAULT & BATTERY-
ASSAULT & BATTERY UPON POLICE OFFICER -
ASSAULT W/DANGEROUS WEAPON
ASSAULT W/I TO KILL-
ILLEGAL POSSESSION OF WEAPON-
ARMED ROBBERY -

NEW JERSEY SUPERIOR COURT

MIDDLESEX COUNTY
LAW DIVISION
(CRIMINAL)
File No. 73-1133

THE STATE OF NEW JERSEY

vs.

JOANNE DEBORAH CHESIMARD

Defendant.

INDICTMENT No. 43272
First Grand Jury
May 1973 Stated Session

September Term 1972

THE GRAND JURORS of the State of New Jersey, for the County of Middlesex, upon their oaths PRESENT that JOANNE DEBORAH CHESIMARD on the 2nd day of May 1973, in the Township of East Brunswick, in the County of Middlesex aforesaid, and within the jurisdiction of this court, did unlawfully, willfully, feloniously and with malice aforethought kill and murder WERNER FOERSTER, a New Jersey State Trooper then and there acting in the performance of his duties while in uniform, contrary to the provisions of NJS 2A:113-1 and NJS 2A:113-2 and to the form of the statute in such case provided, and against the peace of this State, the government and dignity of the same.

SECOND COUNT

AND THE GRAND JURORS aforesaid, upon their oaths aforesaid, do further PRESENT that JOANNE DEBORAH CHESIMARD at the time, place and jurisdiction aforesaid, did unlawfully, willfully, feloniously and with malice aforethought kill and murder JAMES COSTON a/k/a Zayd Malik Shakur, contrary to the provisions of NJS 2A:113-1 and NJS 2A:113-2 and to the form of the statute in such case provided, and against the peace of this State, the government and dignity of the same.

THIRD COUNT

AND THE GRAND JURORS aforesaid, upon their oaths aforesaid, do further PRESENT that JOANNE DEBORAH CHESIMARD at the time, place and jurisdiction aforesaid, did commit an atrocious assault and battery upon JAMES M. HARPER by atrociously and willfully wounding, maiming and injuring him, contrary to the provisions of NJS 2A:90-1, and against the peace of this State, the government and dignity of the same.

FOURTH COUNT

AND THE GRAND JURORS aforesaid, upon their oaths aforesaid, do further PRESENT that JOANNE DEBORAH CHESIMARD at the time, place and jurisdiction aforesaid, did commit an assault and battery upon JAMES M. HARPER, a New Jersey State Trooper, then and there acting in the performance of his duties while in uniform, by unlawfully,

willfully wounding, maiming and injuring him, the said State Trooper, contrary to the provisions of NJS 2A:90-4 and against the peace of this State, the government and dignity of the same.

FIFTH COUNT

AND THE GRAND JURORS aforesaid, upon their oaths aforesaid, do further PRESENT that JOANNE DEBORAH CHESIMARD at the time, place and jurisdiction aforesaid, unlawfully, willfully and maliciously did commit an assault upon JAMES H. HARPER with an offensive weapon or instrument, to wit, a handgun, then and there had and held contrary to the provisions of NJS 2A:90-3 and against the peace of this State, the government and dignity of the same.

SIXTH COUNT

AND THE GRAND JURORS aforesaid, upon their oaths aforesaid, do further PRESENT that JOANNE DEBORAH CHESIMARD at the time, place and jurisdiction aforesaid, did commit an assault upon JAMES H. HARPER with a certain firearm, loaded with gun powder and metal bullets, with intent willfully, maliciously and feloniously then and there to kill the said JAMES H. HARPER contrary to the provisions of NJS 2A:90-2 and against the peace of this State, the government and dignity of the same.

SEVENTH COUNT

AND THE GRAND JURORS aforesaid, upon their oaths aforesaid, do further PRESENT that JOANNE DEBORAH CHESIMARD at the time, place and jurisdiction aforesaid, unlawfully carried and possessed and had under her custody and control, certain weapons, to wit,

one (1) 9 Milimeter Bergman .38 Super Automatic Llama Pistol - Serial # 24831
and/or one (1) 9 Milimeter Luger Browning automatic Pistol
and/or one (1) .380 caliber Browning Automatic Pistol, Serial # 71M12237

without having obtained the requisite permit to carry said firearms, contrary to the provisions of NJS 2A:151-41(a) and against the peace of this State, the government and dignity of the same.

EIGHTH COUNT

AND THE GRAND JURORS aforesaid, upon their oaths aforesaid, do further PRESENT that JOANNE DEBORAH CHESIMARD at the time, place and jurisdiction aforesaid, while armed with a firearm, to wit, a handgun, then and there did unlawfully, forcibly and feloniously take from the person of WERNER FOERSTER, a New Jersey State Trooper property of the said WERNER FOERSTER, to wit, a .38 caliber Smith & Wesson revolver, by violence, to wit, by shooting, slaying, and killing the said WERNER FOERSTER, contrary to the provisions of NJS 2A:141-1 and NJS 2A:151-5, and against the peace of this State, the government and dignity of the same.

A True Bill:

Leon Oxley, Foreman

BY: _____
ASSISTANT PROSECUTOR

EXHIBIT "B"

21a

Evelyn A. Williams

ATTORNEY AT LAW

461 CENTRAL PARK WEST NEW YORK, N. Y. 10025 212 - 866-6641

Spetember 28, 1973

Honorable Lee P. Gagliardi
United States District Judge
Southern District of New York
U. S. Courthouse - Foley Square
New York, New York 10007

RE: UNITED STATES OF AMERICA v.
JOANNE CHESIMARD, FREDDIE
HILTON and AVON WHITE

INDICTMENT NO. 73 Cr. 572

Honorable Sir:

In compliance with your request during the pre-trial hearing in the above case on the 26th day of September, 1973, please be advised that there were Seven motions argued before Judges Leon Gerolfsky and John E. Bachman of the Middlesex County Court on the 28th day of September, 1973. All motions were disposed of except the motion for change of venue, which hearing was continued until the 1st day of October, 1973, at which time it is anticipated that a decision will be made.

Whether the motion for a change of venue in the Jersey case is granted or not, counsel for Defendant Chesimard have been advised that the Jersey trial will begin on the 9th day of October, 1973.

I am sure that Your Honor realizes the magnitude of necessary pre-trial preparation in a case which involves, among the Eight count indictment, Two Murder Counts and One Count of attempted murder.

In view of the fact that the Jersey case has demanded unceasing defense counsel efforts in preparation for trial; that even at this date, approximately two weeks before trial, various expert witnesses who will testify during the trial are still evaluating and preparing themselves with various factors related to the defense of JoAnne Chesimard; as well as the fact that I am her attorney in the above case as well as the New Jersey case, I respectfully request

Evelyn A. Williams ATTORNEY AT LAW

461 CENTRAL PARK WEST NEW YORK, N. Y. 10025 212 - 866-6641

an adjournment of the above case until the completion of the New Jersey trial.

Defendant Chesimard is also requesting that a joint conference be arranged between Avon White and herself to take place at the Middlesex County Workhouse, New Brunswick, New Jersey, where she is incarcerated awaiting the trial to be held in New Jersey on the 9th day of October, 1973. This was discussed with you during the pre-trial hearing on the 26th day of September. There was no objection to such a conference from either Your Honor or Assistant United States Attorney Truebner. I am therefore enclosing an Order Permitting a Joint Conference between AVON WHITE and JOANNE CHESIMARD. As discussed, there will, of course, be no Joint Conference between the two if AVON WHITE objects. The Order herein enclosed is, therefore, presented to you conditioned by the desire of AVON WHITE.

Very truly yours,

Evelyn A. Williams

cc: JOHN H. GROSS
Assistant United States Attorney

ROBERT BLOOM, ESQ.
Attorney for Freddie Hilton

EXHIBIT C

JOHN S. KUHLTHAU
Middlesex County Prosecutor
County Administration Building
New Brunswick, New Jersey 08903
Telephone (201) 246-6300

STATE OF NEW JERSEY,	:	MIDDLESEX COUNTY COURT LAW DIVISION (CRIMINAL)
-vs-	:	INDICTMENT NO. 1436-72
CLARK EDWARD SQUIRE a/k/a JAMES HENRY WALKER a/k/a ARCHIE GIBSON,	:	
Defendant.	:	

. . . . . .

STATE OF NEW JERSEY,	:	MIDDLESEX COUNTY COURT LAW DIVISION (CRIMINAL)
-vs-	:	INDICTMENT NO. 1437-72
JOANNE DEBORAH CHESIMARD,	:	
Defendant.	:	ORDER

This matter coming on before the Court upon application of the attorneys for the defendants, Raymond A. Brown, Esquire and Evelyn A. Williams, Esquire, appearing on behalf of the defendant Chesimard and Charles T. McKinney, Esquire, appearing on behalf of the defendant Squire, and in the presence of C. Judson Hamlin, 1st Assistant Prosecutor of Middlesex County for the State for an Order granting a change of venue, or in the

24a

alternative, for a foreign jury, and a request for continuance being withdrawn; and

The Court having considered the affidavits and pleadings on file, the Briefs and arguments of counsel, and for other good cause shown;

It is on this first day of November, 1973 ORDERED and ADJUDGED that:

1. Defendants' motion for a foreign jury shall be and hereby is granted.

2. The County of Morris is hereby designated for purposes of jury selection pursuant to N.J.S.2A:76-2.

3. Upon completion of jury selection, the cause shall be returned to Middlesex County for trial.

4. The trial of the cause shall be continued for such reasonable period of time as is necessary to select and summon an appropriate panel of veniremen.

5. Such further Orders as are necessary to administratively implement the summoning of the panel shall be issued by the Court sua sponte and shall be served upon counsel for the parties.

Leon Gerofsky
LEON GEROFSKY, A.J.S.C.

We hereby consent to the form and entry of the foregoing Order.

RAYMOND A. BROWN
Attorney for Defendants

CHARLES T. MC KINNEY
Attorney for Defendant
Squire

EVELYN A. WILLIAMS
Attorney for Defendant
Chesimard

EXHIBIT "D"

MIDDLESEX COUNTY COURT
LAW DIVISION (CRIMINAL)
INDICTMENT NO. 1436-72

STATE OF NEW JERSEY, :

-vs- :

CLARK EDWARD SQUIRE a/k/a :
JAMES HENRY WALKER a/k/a
ARCHIE GIBSON,

Defendant :

. . . . . .

STATE OF NEW JERSEY, : MIDDLESEX COUNTY COURT
LAW DIVISION (CRIMINAL)

-vs- : INDICTMENT NO. 1437-72

JOANNE DEBORAH CHESIMARD :

Defendant : ORDER

TO: ARNOLD B. LADD
Sheriff, Morris County
Morris County Courthouse
Morristown, New Jersey

GREETING:

The Superior Court of New Jersey, Middlesex County, having ordered trial by a foreign jury pursuant to N.J.S.2A:76-2, and said jury to be selected from the Venireman of Morris County, YOU ARE HEREBY ORDERED on this first day of November, 1973 to:

1. Select and summon a jury panel in the number of 108 persons in the method and manner as a regular general jury panel, said veniremen to report on January 2, 1974; also select and summon a jury panel in the number of 108 persons to report on January 14, 1974; also select and summon a jury panel in the number of 156 persons to report on January 28, 1974.

2. Summon and return such jurors to a courtroom of the Morris County Courthouse as may be designated by the Assignment Judge of Morris County for jury selection to be conducted by a Judge of the Middlesex County Court.

3. Upon the empanelling and swearing of a trial jury, the Sheriff of Middlesex County shall be responsible for the safeguarding of said jury and shall transport them to Middlesex County for the trial of the cause under such orders and directions as the trial judge may issue.

4. Serve a bill of costs incurred for the summoning and attendance of said jurors upon the Freeholders of Middlesex County for reimbursement and necessary expenditures.

LEON GEROFSKY, A.J.S.C.

Exhibit "E"

cam

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA :

- vs - : 73 CR. 572

JOANNE CHESIMARD, :
FREDDIE HILTON :

----------X

Before HON. LEE P. GAGLIARDI, District Judge

28 November, 1973
10:35 a. m.
Room 619

Appearances:

For The Government:

PETER L. TRUEBNER, ESQ. Assistant United States Attorney

For Defendant Joanne Chesimard:

EVELYN WILLIAMS, ESQ.

For Defendant Freddie Hilton:

ROBERT BLOOM, ESQ.

- o -

THE CLERK: United States of America versus Joanne Chesimard and Freddie Hilton.

Is The Government ready?

MR. TRUEBNER: The Government is ready.

THE CLERK: Is defendant Chesimard ready?

MISS WILLIAMS: Your Honour, defendant Chesimard has an application.

THE COURT: All right.

MISS WILLIAMS: As The Court is perfectly aware, defendant Chesimard is in the custody of the New Jersey authorities on an eight count indictment. I believe that Your Honour has a letter from me -- if you will bear with me for just a moment I will indicate the date of that letter. That letter is dated September 28th, 1973. That letter was sent to the Assistant U. S. Attorney, Mr. Gross, and to Your Honour, indicating the status of that trial.

Now, on October 9th that case in fact went to trial, after two weeks there was a motion for a change of venue which was granted by the Judge.

There are intermediate motions, and very necessary motions that must be made in relation to the county to which this case has been transferred, which is Morris County, in the State of New Jersey.

I have, unfortunately, been overly active, excessively tired in relation to the variety of motions that have been presented before the Court of New Jersey, in Middlesex, and in preparation for the various motions that must be made in relation to the change of venue which is a deplorable one.

Your Honour, in my letter to you I requested, as I did request at the time of the last pre-conference hearing, that this case be adjourned until the termination of the case in New Jersey, on which there are eight counts, two counts of murder, one count of attempted murder and other counts of an assaultive nature dealing with murder plus the possession of dangerous weapons.

Now, Your Honour, in the interest of justice I am sure that since no bail has been set, or, bail has been denied for defendant Chesimard in New Jersey, and in view of the fact that I think it was very easy for The Court to determine the innumerable efforts, innumerable motions and, in some cases, several appeals that have been made in relation to the New Jersey Court, that this is an ongoing continuous case, that this case is now set down for trial on January 2nd, 1973 before -- I say set down, I mean by that that in fact a jury

will be allegedly chosen from the qualified jurors of Morris County, and then brought back to Middlesex County for the trial.

There are many motions in relation to that several of which are still waiting to be filed. I have, in the interest of justice, which I think, and I hope, Your Honour, that we are all concerned about, that the defendant Chesimard, which is the only one that I represent, and the only one about whom I can speak at the moment, would be given an opportunity not in fact to be harassed by this Court, or to be circumvented in her efforts for a trial that certainly in relation to its weight, in relation to its seriousness, would be intercepted by a trial of this nature.

There is no bail for defendant Chesimard. She will be there. The Southern District has all of its options open to it, as I see it, for trial at the termination of the trial in Jersey, and this is what I have not only requested The Court on previous occasions, but which I have also submitted to The Court in my letter to The Court on September 28th, 1973, explaining the reasons for that.

THE COURT: Miss Williams, when did the proceedings for the selection of the jury terminate in New Jersey?

MISS WILLIAMS: Your Honour, October 9th, as I explained to you, or, as I told you, jury selection process began. At approximately three weeks later it terminated. Now, I don't have the date book, so --

THE COURT: Well, approximately. Was it before the end of October?

MISS WILLIAMS: I would think it would be before the end of October, Your Honour. But let me please point out to The Court that there are very serious legal constitutional considerations --

THE COURT: I am aware of those things, Miss Williams, but I was --

MISS WILLIAMS: (continuing) -- that defence counsel has been involved in, and has made motions in relation to.

THE COURT: I am aware of the gravity of the case pending in New Jersey. I am aware of the gravity of the case pending here. I am aware of the fact that we also have here a co-defendant who made an application back in September for an immediate trial, a severance, and so forth, because he was a jail case. He is a jail case. Mr. Freddie Hilton. He is a jail case. And I am not going to have three or four more trials involved in this case. I have already had one, and --

MISS WILLIAMS: Your Honour, I can understand

that.

THE COURT: And I am very disappointed, although it is not going to be taken out on you or your client, but I do want to let you know that I am extremely disappointed about the fact that you did not acquaint me with what happened in New Jersey. I was under the impression all along here that that case was proceeding to trial and it was only within the last week that I ascertained that a mistrial had been declared there, and now as you tell me it was som-time in the end of October or sometime before the first of November, and here we are today is the 28th of November.

We have had an entire month go by, I could have worked this case in. We have a case here that the last time around when we had two defendants, as we are going to have in this case now, a case in which testimony didn't take more than two or three days. It is not a difficult case to prepare.

MISS WILLIAMS: Your Honour, I --

THE COURT: I am disappointed, again, I notified your office and got either your secretary or answering service and no response. You were supposed to have been here, directed to have been here before --

MISS WILLIAMS: Your Honour, may I indicate --

THE COURT: Just a moment, Miss Williams.

You were supposed to have been here before me yesterday. I don't like to do it, I think I respect the fact that you are a busy practitioner, and everybody else is, but I was very seriously yesterday considering a step that I think would be the ultimate step that I would have taken on provocation of directing a marshal to produce counsel here in Court. Now, I --

MISS WILLIAMS: Well, I am sure Your Honour understood that that would not be necessary.

THE COURT: Well, I had no call from you. My calendar had been completely disrupted. I am aware of your problems in New Jersey, but I am going to set this case, give you a few more days because of what is involved here, and this case is going to be set for trial, to commence --

MISS WILLIAMS: May I --

THE COURT: (continuing) to commence on December 34d at 10:00 o'clock. That is next Monday at 10:00 o'clock,and this case is going to proceed to trial on that date, Miss Williams.

MISS WILLIAMS: Your Honour, may I say something?

THE COURT: Yes.

MISS WILLIAMS: I understand The Court's reluctance

to hold this case in abeyance in relation to --

THE COURT: You know I have the record from Second Circuit, and our rules here --

MISS WILLIAMS: Yes, sir.

THE COURT: The District Judges are subjected to the dictates, certainly which I adopt wholeheartedly, of our Second Circuit rules.

MISS WILLIAMS: Your Honour, may I please urge The Court that in view of the fact that defendant Chesimard in particular, I do not represent anyone else in this case, and I am sure that co-counsel, or, counsel for the other defendants will make his own plea to you, but may I point out to The Court very seriously, and this is not in an effort to evade or avoid, which is in fact impo-sible, prosecution of this defendant, or the trial of this defendant before this Court.

All I am requesting is that in view of the by far more serious allegations in Jersey, and the fact that I have been working and other co-counsel, Mr. Raymond Brown from Jersey City has been working in terms of, innumerable motions and appeals, etcetera, and since this defendant is without bail in New Jersey, that this defendant certainly is available to The Court for trial at any time.

May I urge The Court, as I have urged on previous occasions, that this particular trial be set down at the termination of the Jersey trial, because, as Your Honour knows, if I am the attorney for this defendant there are just so many things, there are just so many motions, there are just so many necessary investigatory procedures that I personally can be involved in, and that this defendant can be the recipient of, to justify a trial that in fact creates in some small aspect judicial process and justice.

I am in fact urging The Court to put this case over until the termination of the New Jersey case. I will not go into my own personal difficulties in terms of travel and so forth, but I am urging The Court that since I am the attorney for the defendant Chesimard in both Courts, in Both Jersey, this Southern District, Eastern District and other areas in which she is involved, that The Court at least for the perservation of justice and for the preservation of at least, as I believe The Court of Appeals indicated, the appearance of justice in the Mitchell-Stans case, that the Court permit me to continue all of the necessary motions, and they are multiple, all of the necessary exercises in relation to the proper defence that must be presented

before a jury and a Court for the defendant Chesimard in The State of New Jersey, and I do not feel that this Court is going to be jeoprodized in any way.

The defendant is incarcerated. There is no bail set. I simply do not understand, Your Honour, why knowing the circumstances which I have explained to Your Honour on previous occasions, I have a letter in which I have explained also what has happened, that The Court would not permit in fact that this trial be held after the completion of the trial in Jersey.

THE COURT: Well, I will deny that application. This case will proceed to trial on Monday morning, December 3rd at 10: 00 o'clock in Courtroom 318.

All right.

MR. BLOOM: May I be heard, Your Honour, before Your Honour leaves the bench? I should like to point out that I have listened to Miss Williams and Your Honour, and we spoke yesterday in this Courtroom and Your Honour speaks of -- and I mentioned it in Court and I won't repeat those -- the reasons why I am not prepared.

I would just like to emphasize one of those, Your Honour. Again, we are a co-defendant, we cannot be prepared, through no fault of her own, she has

been working day and night, I know that, on another case. She cannot be prepared in three days. We don't even know the identification situation with regard to Joanne Chesimard which has to have effect. Whatever happens to a co-defendant in a joint trial has to have an effect necessarily on all co-defendants.

Secondly, Your Honour, Your Honour speaks of the rules of this district. I should point out that Mr. Truebner, in his affidavit, pointed out that there are indeed, and of course we know there are indeed, exceptions to the six month rule. Indeed The Court was able to find an exception to the six month rule in ruling on my motion for a severance at a time when my schedule permitted the trial of this case, and the trial of this case without the necessarily unprepared Joanne Chesimard.

That's what I was talking about, and my correspondence to Your Honour makes that clear. What I am saying to Your Honour is --

THE COURT: I don't see how you could be less prepared today when you indicated back in September that you wanted an immediate trial. You must have been prepared then and I don't see how you could be any less prepared now, several months later.

You have been furnished, as I understand, with the transcript of the previous trial in which there was a dismissal as to one defendant, and an acquittal as to the other defendant.

Now you have been furnished, as I understand it, with that transcript --

MR. BLOOM: That's correct.

THE COURT: (continuing) -- sometime ago. And, gentlemen -- excuse me for saying, "gentlemen", that is a customary habit, because it is seldom that we have lady attorneys before us -- but, counsellors, I see no reason whatsoever in all the circumstances, you did make your application, I heard you yesterday, the case is set for trial on Monday, December 3rd at 10:00 o'clock in room 318.

MISS WILLIAMS: Before you leave the bench, I certainly would like to put my objection to Your Honour's ruling on the record.

THE COURT: All right. I have heard and I do know that you will take exception.

MR. BLOOM: May I complete the record, Your Honour? May I complete the record, please, Your Honour?

May the record reflect that His Honour left the

bench and did not wish to hear my continuing statement.

(Time noted: 10:55 a. m.)

- O -

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 660—September Term, 1973.

(Argued December 3, 1973 Decided December 3, 1973.)

Docket No. 73-2744

JOANNE CHESIMARD and FREDDIE HILTON,

Petitioners,

—against—

HON. LEE P. GAGLIARDI, United States District Judge, and the UNITED STATES OF AMERICA,

Respondents.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

JOANNE CHESIMARD, FREDDIE HILTON and AVON WHITE,

Defendants.

Before:

WATERMAN and FEINBERG, *Circuit Judges,* and GURFEIN, *District Judge.**

* Of the United States District Court for the Southern District of New York, sitting by designation.

Petitions for mandamus to direct Judge Lee P. Gagliardi in the United States District Court for the Southern District of New York to stay trial of petitioners.

Petitions denied.

EVELYN A. WILLIAMS, New York, N.Y., *for Petitioner Chesimard.*

ROBERT BLOOM, New York, N.Y., *for Petitioner Hilton.*

PETER L. TRUEBNER, Assistant United States Attorney, *for the United States.*

PER CURIAM:

By petition filed on November 30, 1973, Joanne Chesimard sought a writ of mandamus directing a stay of her trial on charges of armed bank robbery and conspiracy to rob, scheduled to begin on December 3, 1973 in the United States District Court for the Southern District of New York before Lee P. Gagliardi, *J.* The petition was argued before us on the next court day, the morning of December 3, 1973. At that time, counsel for Freddie Hilton orally moved to join in the petition for a writ. Petitioners argued that they were being deprived of their constitutional rights by being forced to trial on short notice. Because the trial was about to start and because on the record before us we believed that the holding of *Stans* v. *Gagliardi*, slip op. 1 (2d Cir. Sept. 11, 1973), forbade the use of mandamus, we denied the petition by simple order, deferring to a later date issuance of this opinion.

Although we denied the requested relief in *Stans*, two members of that panel stated their views as to the wisdom of a short postponement so that the trial judge could

"again consider the matter." Id. at 5. In this case, however, we did not make any suggestion as to how the district court should exercise its discretion. A comparison of the two cases is instructive. The indictment in *Stans* was 46 pages, containing 16 counts, and was supplemented by a 60-page bill of particulars. Id. at 4. The indictment in this case is three pages, containing three counts. Our dissenting colleague in *Stans* properly described that case as "without precedent in the history of the country," and the charges as "somewhat novel." Id. at 7. The charges here, while serious, are not unusual.

Moreover, in *Stans*, defense counsel had obviously been doing their best to prepare for the trial in the Southern District of New York. In this case, counsel for Chesimard in late September requested a postponement of proceedings in the Southern District to allow for preparation of a defense to state murder charges brought against her client in New Jersey and then scheduled to come to trial on October 9. At the same time, counsel for Hilton renewed a prior motion for a severance and an immediate trial. The Government, fearing unnecessary duplication of effort,[1] opposed severance, and the court denied it. Late in October, a mistrial was declared in the New Jersey murder trial and the retrial was postponed until January 2, 1974. However, Judge Gagliardi was not advised of that fact[2] and he apparently did not find out about it until on or about November 27, 1973, just prior to a conference, which Chesimard's

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1 There had already been a trial in June 1973 before Judge Gagliardi in which Louis Chesimard, Joanne Chesimard's former husband, and Paul Stewart were acquitted of participating in the same bank robbery charged in the instant indictment. The transcript of that trial was apparently furnished some time ago to counsel for Hilton at his request.

2 The Southern District's "Plan for Achieving Prompt Disposition of Criminal Cases" imposes on counsel the duty of promptly informing the court of matters bearing on the scheduling of cases for trial. *United States* v. *Cacciatore*, slip op. 309, 315 (2d Cir. Nov. 14, 1973).

attorney did not attend although she had been directed to do so. Furthermore, Chesimard's attorney at oral argument took the position that she cannot be expected to try any case involving her client while the murder charges are pending in New Jersey, and that she needs six months to prepare for the instant case. We found this stance unreasonable. Counsel for Hilton, moreover, offered no substantial justification for delaying the trial. Presumably, he was prepared to proceed with the case at the time he moved for an immediate trial, more than two months ago; he cannot be any less ready now. In addition, Hilton's counsel made no written motion to us for a stay, and joined in Chesimard's motion only orally and at the last minute.

Under these circumstances, we have seen no reason to offer any suggestions to the district court, certainly an unusual practice, as to the exercise of its discretion in ruling on petitioners' requests for postponement of trial. Petitions denied.

[ ] OTHER PANEL (Specify below)

LOCATION NUMBER

DOCKET NUMBERS
Magistrate
District Court
Court of Appeals

1 [ ] Defendant – Adult
2 [ ] Defendant – Juvenile
3 [ ] Appellant
4 [ ] Probation Violator
5 [ ] Parole Violator
6 [ ] Habeas Petitioner
7 [ ] 2255 Petitioner
8 [ ] Material Witness
9 [ ] Other (Specify Below)

[ ] Felony
[ ] Misdemeanor

COURT ORDER

TIME SPENT	DATES	HOURS	AMOUNT
I IN OPEN COURT			
A. ARRAIGNMENT &/OR PLEA			RATE PER HR $ HOURS TIMES RATE
B. MOTIONS & REQUESTS			
C. BAIL HEARINGS			
D. SENTENCE HEARINGS			
E. TRIAL			
F. REVOCATION HEARINGS			
G. APPEALS COURT			
H. OTHER (Specify below)			
TOTAL "IN COURT" HOURS			$
II OUT OF COURT			
A. INTERVIEWS & CONFERENCES			$
B. OBTAINING & REVIEWING RECORDS			
C. LEGAL RESEARCH & BRIEF WRITING			
D. INVESTIGATIVE & OTHER WORK (Specify)			
E. TRAVEL TIME (during normal office hours only): (1) TO & FROM COURT (round-trips under 1 hr not allowed) (2) OTHER TRAVEL TIME (Specify)			
TOTAL "OUT OF COURT" HOURS			$
TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME			$
III ITEMIZED EXPENSES (Specify, per instruction sheet)		AMT. PER ITEM	
		$	
TOTAL ITEMIZED EXPENSES			$
TOTAL COMPENSATION & EXPENSES			$
DEDUCT AMOUNTS PREVIOUSLY PAID IF APPLICABLE			
NET AMOUNT CLAIMED			$

* If more space is needed use additional blank sheets

SIGNATURE OF ATTORNEY/PAYEE — I SWEAR & AFFIRM THE TRUTH & CORRECTNESS OF ABOVE STATEMENTS — DATE

SIGNATURE OF JUDGE/MAGISTRATE — DATE — AMOUNT CERTIFIED/APPROVED $

SIGNATURE OF CHIEF JUDGE COURT OF APPEALS — Payment in excess of statutory limitation approved under 18 USC 3006A(d) (3) — DATE — AMT. APPROVED $

COUNSEL
[ ] IS A PRIVATE ATTORNEY
IS FURNISHED BY: PHONE NO.
[ ] COMMUNITY DEFENDER ORGANIZATION
[ ] BAR ASSOCIATION OR LEGAL AID AGENCY

VOUCHER NUMBER 67368

18

ATTORNEY
ORGANIZATION
ADDRESS
ZIP CODE

Howard L. Jacobs, P.C.
[illegible] Broadway
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AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

Copy 5—Filed in court clerk's office as soon as appointment made

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. JUDGE LEE P. GAGLIARDI	73 Cr. 572
v.	
EVELYN WILLIAMS, ESQ.	

CERTIFICATE OF CONTEMPT

In accordance with Rule 42(a) of the Federal Rules of Criminal Procedure and pursuant to Title 18, United States Code, Section 401, I hereby certify that I saw and heard the conduct set forth below, which conduct occurred in the actual presence of the Court during the trial of the case entitled United States of America v. Joanne Chesimard, et al., 73 Crim. 572, which trial commenced on December 4, 1973.

I find that the acts, statements and conduct of the counsel for defendant Chesimard, Evelyn Williams, Esq., hereinafter specified, constitute a contempt of this Court and a deliberate and wilful attempt to sabotage the orderly administration of justice; that this misconduct was of so grave a character as to disrupt the proper functioning of this Court. Ms. Williams has, by reason of her conduct, made the maintenance of the dignity of this Court and the preservation of order in the courtroom an exceedingly difficult task. Despite warnings to Ms. Williams to cease this conduct and an explanation of the possible

consequences of her actions, Ms. Williams persisted in her disruptive and contumacious behavior. The potential effects of the continuation of this behavior on the administration of justice in this case necessitate that I deal with Ms. Williams' activities at this time. Inasmuch as no single reference or series of references to the transcript can accurately reflect the extent of Ms. Williams' contemptuous conduct, I hereby make the entire record of the trial a part of these proceedings. In addition to the specific conduct set forth below and in the portions of the transcript appended hereto the Court notes that Ms. Williams has continually, during the course of the trial, conducted herself in a manner at times calculated to display her disrespect for this Court and these proceedings.

Accordingly, it is adjudged that Evelyn Williams, Esq. is guilty of the criminal contempt hereinafter described.

I.

On December 4, 1973, shortly before the conclusion of the Court's afternoon session, the defendant Joanne Chesimard was excluded from the courtroom following a series of outbursts on her part. After the defendant Chesimard was escorted from the courtroom, Ms. Williams engaged in a colloquy with the court concerning the exclusion of the defendant and the court's ruling concerning the form in which objections were to be made in the presence of the jury. During the course of this colloquy Ms. Williams not only

took formal exception to the court's ruling but announced that she would not submit to the direction of the court in this regard. Towards the conclusion of this exchange Ms. Williams, although insisting that she continued to represent the defendant Chesimard, stated that she would not participate further in the proceedings. Having made this statement and despite the explicit direction by the court to remain in the courtroom, seated at the counsel table and a warning by the court as to consequences of her contumacious conduct, Ms. Williams left the courtroom. At the time Ms. Williams absented herself, court was in session and the jury selection was in progress. Shortly after Ms. Williams left the courtroom, the trial was adjourned until 9:30 A.M. the following morning.

Court resumed on the morning of December 5, 1973; Ms. Williams did not appear. Ms. Williams was contacted during the course of the morning and directed to be in court at 2 P.M. During the course of the proceeding, defendant Chesimard was again removed from the courtroom following a repetition of her outbursts of the previous afternoon. After the removal of defendant Chesimard, Ms. Williams again engaged in a colloquy with the court. Ms. Williams told the court that she would not listen to any statement made by the court and despite repeated direction to remain at the counsel table she made her way to the rear door in an attempt to leave the courtroom. At this juncture, the marshalls, acting at the court's direction, locked the exits to the courtroom. The colloquy continued with Ms. Williams standing at the rear door of the courtroom. The court di-

rected Ms. Williams to return to the counsel table; she refused. The court warned Ms. Williams that she would be cited for contempt if she persisted in her conduct; she indicated that she was aware of the possible consequences of her actions. The court offered Ms. Williams the opportunity to purge herself of her contempt; she declined. The court asked Ms. Williams if she had anything to say in defense of her contumacious conduct; she stated that she did not consider her conduct contumacious. At this point, the court held Ms. Williams in summary contempt for failure to obey the legal order and directive of the court.

* * *

In accordance with Rule 42(a) of the Federal Rules of Criminal Procedure and pursuant to Title 18, United States Code, Section 401 I find that Evelyn Williams, Esq. has, by her acts, statements and conduct, committed acts of contempt, constituting a deliberate and wilful attack upon the administration of justice and with the professed intent of disrupting the proper functioning of this court.

So ordered.

U.S.D.J.

Dated: New York, New York
December 5, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel. JUDGE LEE P. GAGLIARDI v. EVELYN WILLIAMS, ESQ.	73 CR. 572 MOTION

Upon the affidavit of William M. Kunstler, duly verified the day of December, 1973, and all the proceedings heretofore had herein, Evelyn Williams, by her counsel below-named, respectfully moves this Court for orders (1) setting aside and vacating a certain certificate of contempt, dated December 5, 1973, and served upon her in open court on December 18, 1973, finding her guilty of acts of criminal contempt purportedly set forth therein; (2) assigning this cause to another judge for trial by jury; and (3) granting such other and further relief as to this Court may seem just and proper in the premises.

Respectfully submitted,

WILLIAM M. KUNSTLER
Center for Constitutional Rights
853 Broadway
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National Conference of Black Lawyers
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National Bar Association
377 Broadway
New York, New York

Attorneys for Evelyn Williams

OF COUNSEL:
Joseph Mack
O.T. Wells
Napolean Williams
James Reif

Dated: New York, N.Y.
December 19, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel. JUDGE LEE P. GAGLIARDI v. EVELYN WILLIAMS, ESQ.	73 CR. 572 AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

WILLIAM M. KUNSTLER, being duly sworn, deposes and says:

I am one of the attorneys for EVELYN WILLIAMS, the respondent herein, and I am making this affidavit in support of her motion for orders (1) setting aside and vacating a certain certificate of contempt, dated December 5, 1973, and served upon her in open court on December 18, 1973, finding her guilty of acts of criminal contempt purportedly set forth therein; (2) assigning this cause to another judge for trial by jury; and (3) granting such other and further relief as to this Court may seem just and proper in the premises.

A careful reading of the transcript herein reveals that Hon. Lee P. Gagliardi, the relator herein, was "personally embroiled" according to the criteria set forth in Mayberry v. Pennsylvania, 400 U.S. 455 (1971), and that a different judge should preside at a hearing on the issue of Ms. Williams' alleged contempts. In this connection, see United States v. Seale, 461 F.2d 345 (7th Cir., 1972); In re Dellinger, 461 F.2d 389 (7th Cir., 1972); Offutt v. United States, 348 U.S. 11 (1954).

Only days ago, the United States Supreme Court granted certiorari in Taylor v. Hayes, 42 L.W. 3325 (Dec. 4, 1973), in which there are issues identical to those raised here. Taylor, a Kentucky lawyer in a murder case, was adjudicated guilty of nine counts of contempt at the conclusion of the trial and summarily remanded to jail. Among other things, Mr. Taylor asked the Supreme Court to review (1) whether a lawyer-contemnor should be given some opportunity to be heard in defense or mitigation before being finally adjudged guilty; and (2) whether the trial judge could sit impartially in judgment on multiple contempt charges or should have disqualified himself. For the Court's convenience a copy of Mr. Taylor's petition for certiorari is attached hereto as Exhibit A.

Because the effects of an adjudication of contempt can be far more perilous to an attorney than a layman, it is hoped that this Court will, at the very least, continue respondent's sentencing until after the decision in Taylor v. Hayes, supra. In the interest of justice and in view of the existing law, the certificate of contempt issued herein, which is attached hereto as Exhibit B, should be vacated and set aside and this cause assigned to another judge for trial by jury on the alleged acts of contempts set forth in said certificate.

WHEREFORE, respondent respectfully moves this court for orders (1) setting aside and vacating a certain certificate of contempt, dated December 5, and served upon her in open court on December 18, 1973, finding her guilty of acts of criminal contempt purportedly set forth therein; (2) assigning this cause to another

judge for trial by jury; and (3) granting such other and further relief as to this Court may seem just and proper in the premises.

William M. Kunstler

Sworn to before me this
19th day of December, 1973.

Notary Public

MARK L. AMSTERDAM
NOTARY PUBLIC, State of New York
No. 31-4500647
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re EVELYN WILLIAMS, Defendant.	NO. 73 CR. 572

MEMORANDUM OF LAW AND FACT IN OPPOSITION TO JUDGMENT OF CONTEMPT

Prefatory Statement

This memorandum of law and fact is submitted in opposition to the announced intention of the Court to sentence defendant Evelyn Williams for contempt of court at 9:30 a.m. on Tuesday, December 18, 1973.

The Facts

Ms. Williams, a member of the Bar of the State of New York and this Court, is sole counsel for Joanne Chesimard, a defendant along with Freddie Hilton, in United States of America v. Joanne Chesimard, et al., a criminal prosecution for alleged bank robbery bearing Docket No. 73 Cr. 572, which is currently pending in this Court before Hon. Arnold Bauman, District Judge. The first trial of said defendants* began on

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* Before Hon. Lee P. Gagliardi.

December 3, 1973 and terminated on December 14, 1973 in a mistrial when the jury failed to agree on a unanimous verdict. Following said mistrial, Judge Gagliardi directed Ms. Williams to appear before him at 9:30 a.m. on Tuesday, December 18, 1973, for sentence on alleged contempts committed during the course of said trial.

On November 28, 1973, Ms. Williams informed Judge Gagliardi that she was unprepared for trial in view of the fact that a prosecution resulting from an earlier and infinitely more serious indictment for the capital crime of murder and recently terminated in New Jersey with the granting of a change of venue and the rescheduling thereof for January 2, 1973. Despite a full exposition by Ms. Williams of the compelling reasons for continuing the within prosecution until the termination of the proceedings in New Jersey, the Court refused to do so and, as indicated, scheduled this case for trial on December 3, 1973. See Transcript, November 28, 1973, pp. 1-12A. On or about December 2, 1973, the Court of Appeals refused, in denying a writ of mandamus, to direct the Court to continue said trial, citing United States v. Mitchell, et al., as authority therefor.

The trial began on December 3, 1973 with both defendants and their counsel refusing to proceed because of the fact that Ms. Chesimard was unprepared to defend herself adequately because of the New Jersey proceedings. Defendants did not participate in any way in the selection of the jury, openings, cross-examination of prosecution witnesses, presentation of a case for the defense, or summations, maintaining that Ms. Chesimard was being unfairly forced to trial when she was not prepared to do so. Despite failure to participate in the trial on the part of both defendants, the jury was still not able to reach a unanimous verdict, resulting in the aforesaid mistrial.

During the course of the trial, the relationship between the Court, defense counsel and defendants deteriorated to a point where it was obvious that no proper judicial proceeding in the true sense of the word was taking place. Among other things, the following took place:

a. Ms. Chesimard, despite severe bullet wounds which had severed a median nerve on May 2, 1973 during the events that led to her indictment in New Jersey, was forcibly removed from the courtroom on a number of occasions. (MP 44, 64, 72, 79, SLSG 31, 44)

b. The Court told Ms. Williams he would not permit her to protest the abuse of her client "by the United States Marshals, by your Honor or by any other agency in this counrty." (MP 55)

c. Mr. Hilton was also forcibly removed from the courtroom on a number of occasions when he protested the treatment afforded his co-defendant.

d. Ms. Chesimard accused the Court of having made "deals," of being "corrupt" and "bigoted" and "bought and paid for ..." (MP 71), that she was being subjected to a "lynching" (MP 72), that the judge was like "a two-year old baby" (MP 75), that he acted "so unintelligent as to force a lawyer and client to go to trial when they are not prepared" (MP 76), and "you were bought and paid for and you are an agent of them. You have no interest in anything but a railroad" (MP 79), "you need to direct yourself to have some justice" (SLSG 29), "you are a racist" (SLSG 30); and "I know you are an agent, I know you are an agent of the CIA, preserving big business and you have no concern for justice or for black people or for poor people or for any defendant except for Mitchell and Stans" (SLSG 39).

e. The Court threatened to bind and gag both defendants (MP 60) and attempted to force their counsel to make a choice as to whether they desired their client "here in court and gagged or have her removed from the courtroom." (MP 78-83)

f. After removing both defendants from the courtroom on the afternoon of December 4, 1973, the Court denied applications from their attorneys to be excused after refusing to permit them to participate other than in a passive way in the proceedings (MP 84).

g. On that same afternoon, the Court threatened Ms. Williams with contempt if she left the courtroom after the forcible removal of her client despite the fact that he informed her that all that she would be permitted to do in defense thereof was to make objections in the presence of the jury without argument. (MP 86)

h. When Ms. Williams insisted, under these circumstances in leaving the courtroom, the Court announced that he intended "to take the necessary proceedings in connection with your contumacious

conduct to this Court." (MP 87)

i. The Court insisted on appointing Howard Jacobs as alternate counsel for Ms. Chesimard, over the strenuous objections of the latter and Ms. Williams. (SLSG 10)

j. On numerous occasions, the Court accused Ms. Williams of being late for court, although Ms. Williams had, on each and every such occasion, a legitimate excuse for her failure to be present. (Ibid at 4-5) On one such occasion, he indicated that he had considered "the ultimate step ... of directing a marshal to produce counsel here in Court." (Transcript, November 28, 1973, at 7)

k. Ms. Williams was manhandled by United States Marshals during the removal of her client on December 5, 1973. (SLSG 32)

l. On the afternoon of December 5, 1973, when Ms. Williams insisted on refusing to be seated "without the presence of the defendants whose lives, whose liberty is in jeopardy in this case without their presence in this court..." (SLSG 51), the Court, after first ordering her

to be seated (Ibid), finally stated that she could "remain standing if you prefer...." (SLSG 52)

m. When Ms. Williams insisted on reiterating her insistence on representing her client, the Court directed her to return to the counsel table. Upon Ms. Williams insisting that she would not return to the counsel table "unless the defendant Chesimard is here to listen..." (SLSG 53), the following colloquy occurred:

THE COURT: Ms. Williams your failure to obey my instructions may result in your being cited for contempt.

MS. WILLIAMS: I am aware of that.

THE COURT: Do you wish to purge yourself of the possibility of being held in contempt?

MS. WILLIAMS: I will purge myself, your Honor, of nothing except a proper defense of my client.

THE COURT: I will direct you to return to the counsel table.

MS. WILLIAMS: I will do anything, you know, to purge myself of an improper defense of my client.

THE COURT: Will you return to the counsel table?

MS. WILLIAMS: I will not, your Honor, sit at that counsel table in the absence of the defendant.

THE COURT: Do you have anything to say in defense of your contumacious conduct in this court?

MS. WILLIAMS: Of the what?

THE COURT: Of your contumacious conduct in this court?

MS. WILLIAMS: I do not accept your characterization of my conduct as contumacious.

THE COURT: I find that you have failed to obey the legal order and directive of this Court, and I therefore, hold you in contempt.

Ms. Williams, return to the counsel table.

Ms. Williams --

MS. WILLIAMS: I heard you, your Honor.

THE COURT: -- return to the counsel table.

MS. WILLIAMS: I will not, unless the defendant Chesimard is present with me at the counsel table. At that point I will return.

THE COURT: The defendant Chesimard will be present at the counsel table whenever she has indicated she will comport herself in such a way that this Court may properly proceed with the business before it.

MS. WILLIAMS: Well, then, I would suggest that your Honor give me an opportunity to again discuss with my client whether she can, in fact, comport herself, as your Honor calls it, in good behavior.

THE COURT: All right.

MS. WILLIAMS: I will not participate --

THE COURT: All right, you may have five minutes in which to talk to her.

The Law

The Court's power to punish for contempt stems from 18 U.S.C. 401 and Rule 42(a) and (b) of the Federal Rules of Criminal Procedure. But, under no circumstances, should a judge who is "personally embroiled," Offutt v. United States, 348 U.S. 11, 17 (1954), and waits until the end of the trial to proceed, hear and determine contempt charges. Mayberry v. Pennsylvania, 400 U.S. 455 (1971). Moreover, only months ago, the United States Court of Appeals for the Second Circuit, in United States v. Marra, 482 F.2d 1196 (1973), in reversing a summary contempt conviction under Rule 42(a) held that "the contempt must not only be committed 'directly under the eye or within the view of the court ... /but must be/ an open threat to the orderly procedure of the court... and a flagrant defiance of the person and presence of the judge before the public ...." 482 F.2d 1202* In addition,

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* This standard has just been expressly reaffirmed by the Second Circuit in United States v. Wilson and Bryan, Slip Opinion, 11/28/73, p. 549. See also Edwards v. Cheng, D.C. Haw., 11/22/73, 14 CrL. 2156.

as in all such cases, "the court must exercise the least possible power adequate to the end proposed ...." (Ibid.)*

In reversing the contempt convictions of both the attorneys and their clients growing out of the celebrated Chicago 8 Conspiracy Trial, the United States Court of Appeals for the Seventh Circuit held that "/T/he normal constitutional presumption in favor of a due process hearing is therefore controlling."** United States v. Seale, 461 F.2d 345, 350 (1972) It went on to state that, under the requirements of Mayberry, it was "incumbent upon a different judge to preside at Seale's contempt hearing on remand. This was also the case in In re Dellinger, 461 F.2d 389 (7th Cir., 1972), the companion case to Seale, in which the alleged contempts of the lawyers in the case were also held to be governed by the tenets of Mayberry because /T/he record reveals that their conduct tended to be productive of actual prejudice toward them on the part of the trial judge. In such a situation, it matters not whether the judge's reaction was understandable or not; Mayberry must govern." 461 F.2d at 397.

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* In this case, it is counsel's understanding that the Court has already indicated that it is forwarding the trial transcript to the Chief Judge of this District.

** Citing United States v. Meyer, 462 F.2d 827 (D.C. Cir., 1972).

In the within case, it is beyond cavil that the Court has waited until the termination of the criminal trial to punish for alleged contempts. It is also impossible to ascertain, from the record, just what conduct of Ms. Williams is, or may be adjudicated, contumacious. In this connection, see SLSG 53, in which the Court talks in terms of her purging herself "of the possibility of being held in contempt." Lastly, there can be no doubt, from the entire record, that the Court was so "personally embroiled," both with the lawyers as well as their clients, as to preclude him from being "the image of the impersonal authority of law" required by Mayberry, supra, or satisfying "the appearance of justice." Offutt v. United States, supra. As Mr. Justice Frankfurter pointed out in Offutt:

> /T/he pith of this rather extraordinary /summary contempt/ power to punish without the formalities required by the Bill of Rights for the prosecution of federal crimes generally, is that the necessities of the administration of justice require such summary dealing with obstructions to it."
>
> 348 U.S. at 14

In disposing of this contention in Dellinger, the unanimous Seventh Circuit stated:

> ... The thrust of the Offutt opinion is that where the trial judge waits until the conclusion of trial to cite for contempt, the necessity to preserve order in the courtroom cannot sanction summary procedure. On the other hand, the "fair administration of justice" (348 U.S. at 17, 75 S.Ct. 11) will not tolerate a judge who has become personally embroiled with trial attorneys to sit in judgment on their conduct, at least after the trial is over, merely because that course is more convenient, more economical and less time consuming than having another judge conduct a hearing. See United States v. Meyer ...."
>
> 461 F.2d at 393-4

Moreover, the Court strongly implied that, in assessing the court's "personal embroilment," the remarks of the lawyer's clients could be taken into consideration. 461 F.2d at 396. Here, the statements of both defendants as to the Court's alleged racism and participation in a legal lynching, among others, made it obviously impossible for him "to maintain that calm detachment necessary for fair adjudication." Mayberry v. Pennsylvania, 400 U.S. at 465. Furthermore, the animus felt by the Court for both counsel is readily apparent in the record, including a threat to have Ms. Williams brought into the courtroom by a marshal. (Transcript, November 28, 1973, at 7)

The Supreme Court has been keenly aware of the inherent danger to justice and due process that arises where a judge sits as judge, jury and prosecutor. "Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer." In re Murchison, 349 U.S. 133, 137 (1955)* Such potential for abuse is only hightened where the proceeding is summary so that the judge is also the sole witness, and unquestioned as well. In re Oliver, 338 U.S. at 278-9 (Rutledge, J., concurring) Only the need to prevent a breakdown of the judicial process allows for this exception to due process. Id. at 275

CONCLUSION

The issue before this Court is so important that it should and must not be decided in haste. To assist the Court, there is appended hereto as Exhibit A the brief recently filed with the Seventh Circuit in In re Dellinger, supra, which resulted in the reversal of the Chicago contempt charges and the reassignment thereof to another judge. It is hoped that, following a study of this memorandum, the Court will follow the lead of the Seventh Circuit so as to avoid a long and tedious appeal with a record that is, to put it mildly,

ambiguous as to the issues hereinabove set forth.

At the very least, this Court should defray any adjudication and sentence until reading and assimilating the Chicago brief and the subsequent cases cited herein. Counsel would further suggest that the matter then be set down for full argument before the Court at some future date. By such a procedure, a tragic miscarriage of justice, with all its potentially serious effects to a member of the Bar might well be avoided.

In closing, counsel would like to point out to the Court the concluding remarks of Burke Marshall, Deputy Dean and Professor of Law, Yale Law School and the Chairman of the Special Committee on Courtroom Conduct of the Association of the Bar of the City of New York, in the recently published Disorder in the Court, the report of said committee (New York: Pantheon Books, 1973), in which he states at p. iv:

But the system works in the great cases, and it has worked, by and large, in all of the cases that were of such concern to the bar two years ago. It is more in danger from interference with counsel fighting for justice for their clients than from whatever disruption - and it is not on the whole very great - is caused by their efforts.

Respectfully submitted,

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Attorneys for Evelyn Williams

OF COUNSEL:
Joseph Mack
O.T. Wells
Napolean Williams
James Reif

Dated: New York, New York
December 18, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA ex rel. :

JUDGE LEE P. GAGLIARDI :

v. : 73 Cr. 572

EVELYN A. WILLIAMS, ESQ. : NOTICE OF APPEAL

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Notice is hereby given that EVELYN A. WILLIAMS, ESQ., defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment of HON. LEE P. GAGLIARDI, which sentenced the defendant to a term of Ten days in jail resulting from a Certificate of Contempt issued pursuant to 42(a) of the Federal Rules of Criminal Procedure and Title 18 United States Code, Section 401, issued on the 5th day of December, 1973, entered in this action on the 3rd day of January, 1974.

DATED: January 14, 1974

EVELYN A. WILLIAMS
Office and P.O. Address
461 Central Park West
New York City, N.Y. 10025

WILLIAM M. KUNSTLER
Center for Constitutional Rights
853 Broadway
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HAYWOOD BURNS
National Conference of Black Lawyers
126 West 119th Street
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National Lawyers Guild
23 Cornelia Street
New York, N.Y. 10014

Attorneys for Defendant

TO: PETER TRUEBNER
Assistant United States Attorney
United States District Court
Southern District of New York
Foley Square, New York City, New York

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel. JUDGE LEE P. GAGLIARDI v. EVELYN WILLIAMS, ESQ.	73 CR. 572

NOTICE OF APPEAL

PLEASE TAKE NOTICE, that the above-named respondent-contemnor hereby appeals to the United States Court of Appeals for the Second Circuit from a judgment of conviction of contempt of the United States District Court for the Southern District of New York, Gagliardi, D.J., duly entered and filed on January 3, 1974, sentencing said respondent-contemnor to ten days imprisonment, and from each and every part thereof.

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OF COUNSEL:
Joseph Mack
Napolean Williams
James Reif

Dated: New York, New York
January 8, 1974

TO: U.S. Attorney
Foley Square
New York, N.Y.

Hon. Lee P. Gagliardi
U.S. District Court
Southern District
Foley Square
New York, New York

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Notice of Appeal was delivered this day by hand to the United States Attorney, Foley Square, New York, New York, and to Hon. Lee P. Gagliardi, United States District Court, Southern District, Foley Square, New York, New York.

Dated: New York, New York
January 9, 1974

William M. Kunstler

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA ex rel. :
JUDGE LEE P. GAGLIARDI : 73 Cr. 572

v. : JUDGMENT AND COMMITMENT

EVELYN WILLIAMS, ESQ. :

- x

EVELYN WILLIAMS, ESQ., having committed, in the presence and hearing of this Court, certain acts which are set forth in detail in the Certificate attached to this Order, it is

ADJUDGED, that in pursuance of Rule 42(a) of the Federal Rules of Criminal Procedure, the defendant EVELYN WILLIAMS hereby is found to be in contempt of this Court, and is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 10 days.

It is ADJUDGED that execution of the sentence shall be stayed pending appeal to the Second Circuit Court of Appeals.

It is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant, and it is further

FILED
APR 5 1973
M. J. MCGUIRE

ORDERED that this Judgment shall be effective nunc pro tunc January 3, 1974.

Dated: New York, New York

February 5, 1974

UNITED STATES DISTRICT JUDGE

CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x No. 40189

UNITED STATES OF AMERICA ex rel.

JUDGE LEE P. GAGLIARDI

MEMORANDUM DECISION

v.

EVELYN WILLIAMS, ESQ.

- x

GAGLIARDI, D.J.

On December 5, 1973, during the course of the trial of United States v. Joanne Chesimard and Fred Hilton, 73 Crim. 572, respondent Evelyn Williams, attorney for defendant Chesimard, was held in summary contempt pursuant to the provisions of Rule 42(a), Fed. R. Crim. P. and 18 U.S,C. S 401. The imposition of sentence on the contempt citation was deferred until the end of the trial of defendants Chesimard and Hilton. On December 18, 1973, respondent Williams appeared before the court for sentencing; at that time respondent was served with a copy of the formal certificate of contempt. At that hearing respondent moved for an order assigning the contempt charge to another judge for the purposes of a jury trial pursuant to Rule 42(b) Fed. R. Crim. P. and 18 U.S.C. S 482. On December 19, 1973, respondent made the instant motion to vacate the certificate of contempt and to assign the cause to another judge for trial by jury. The motion is not addressed to the merits of the contempt citation but rather to the procedure pursuant to which respondent was adjudicated in contempt. Essentially, Ms. Williams

contends that the court was "personally embroiled" under the standards of Mayberry v. Pennsylvania, 400 U.S. 455 (1971) and that, therefore, the court should disqualify itself from presiding over further proceedings in the matter. In Mayberry, the court held that where a judge becomes personally embroiled with the contemnor and delays "treatment" of the contempt until after the close of the trial the matter is more appropriately dealt with by assignment to another judge. The circumstances of the instant case are clearly different from those in Mayberry.

The respondent Williams was held in contempt for attempting to leave the courtroom during the course of jury selection in the Chesimard-Hilton trial and in violation of a direct order by the court to remain at counsel table. Conduct of this type is fundamentally contemptuous. Beyond cavil, an attorney may not be permitted to frustrate the orderly administration of justice by walking out of the courtroom during the course of a judicial proceeding. Judged by any standard, the action itself is contemptuous irrespective of the words.

While it is clear that under the strictures of Mayberry as well as under the holdings of United States v. Seale, 461 F.2d 345 (9th Cir. 1972) and in re Bellinger, 461 F.2d 389 (7th Cir. 1972), a judge who is personally

embroilment'' as defined in Mayberry is not presented in the instant case.

Moreover, unlike Mayberry, this case is not one of a post-trial adjudication of contempt. In Mayberry, the Court stressed the importance of the timing of the contempt citation, stating that where the judge delays treatment of the contempt until the close of the trial and the contempt involves a personal embroilment, it is advisable that the matter be assigned to another judge. The Court did not, however, define the phrase ''treatment of the contempt.'' It is unclear whether the phrase ''treatment of the contempt'' means the citing of the contemnor or the sentencing of the contemnor. Cognizant of this ambiguity and mindful of the prejudice flowing to a defendant when his attorney is held in contempt, this court chose to follow a middle course - citing the respondent for contempt at the mement of her contumacious act and deferring imposition of sentence until the close of the trial. Having reviewed the papers submitted by counsel, I believe that the course was and is appropriate under the circumstances of the instant case.

In addition to contending that the court was personally embroiled with the contemnor, the respondent argues that because she is an attorney and therefore subject to grave consequences as a result of a contempt citation, the matter should be treated under the provisions of Rule 42(b). While it is true that an attorney may suffer more serious consequences than a layman, it

is equally true that an attorney is more familiar with courtroom procedure and etiquette and as an officer of the court is under a greater duty to observe those procedures. In addition, respondent declined to purge herself of her contempt when given the opportunity to do so. In view of the intransigent stance adopted by the defendant just prior to the contempt citation, I do not believe that the fact that she is an attorney requires that she be afforded treatment pursuant to 42(b). Accordingly, the instant motion is denied.

So ordered.

s/Lee F. Gagliardi

Dated: New York, New York
January 4, 1974.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
- vs -	73 CR. 572
JOANNE CHESIMARD, FREDDIE HILTON	

Before HON. LEE P. GAGLIARDI, District Judge

28 November, 1973
10:35 a. m.
Room 619

Appearances:

For The Government:

PETER L. TRUEBNER, ESQ. Assistant United States Attorney

For Defendant Joanne Chesimard:

EVELYN WILLIAMS, ESQ.

For Defendant Freddie Hilton:

ROBERT BLOOM, ESQ.

- o -

THE CLERK: United States of America versus Joanne Chesimard and Freddie Hilton.

Is The Government ready?

MR. TRUEBNER: The Government is ready.

THE CLERK: Is defendant Chesimard ready?

MISS WILLIAMS: Your Honour, defendant Chesimard has an application.

THE COURT: All right.

MISS WILLIAMS: As The Court is perfectly aware, defendant Chesimard is in the custody of the New Jersey authorities on an eight count indictment. I believe that Your Honour has a letter from me -- if you will bear with me for just a moment I will indicate the date of that letter. That letter is dated September 28th, 1973. That letter was sent to the Assistant U. S. Attorney, Mr. Gross, and to Your Honour, indicating the status of that trial.

Now, on October 9th that case in fact went to trial, after two weeks there was a motion for a change of venue which was granted by the Judge.

There are intermediate motions, and very necessary motions that must be made in relation to the county to which this case has been transferred, which is Morris County, in the State of New Jersey.

I have, unfortunately, been overly active, excessively tired in relation to the variety of motions that have been presented before the Court of New Jersey, in Middlesex, and in preparation for the various motions that must be made in relation to the change of venue which is a deplorable one.

Your Honour, in my letter to you I requested, as I did request at the time of the last pre-conference hearing, that this case be adjourned until the termination of the case in New Jersey, on which there are eight counts, two counts of murder, one count of attempted murder and other counts of an assaultive nature dealing with murder plus the possession of dangerous weapons.

Now, Your Honour, in the interest of justice I am sure that since no bail has been set, or, bail has been denied for defendant Chesimard in New Jersey, and in view of the fact that I think it was very easy for The Court to determine the innumerable efforts, innumerable motions and, in some cases, several appeals that have been made in relation to the New Jersey Court, that this is an ongoing continuous case, that this case is now set down for trial on January 2nd, 1973 before -- I say set down, I mean by that that in fact a jury

will be allegedly chosen from the qualified jurors of Morris County, and then brought back to Middlesex County for the trial.

There are many motions in relation to that several of which are still waiting to be filed. I have, in the interest of justice, which I think, and I hope, Your Honour, that we are all concerned about, that the defendant Chesimard, which is the only one that I represent, and the only one about whom I can speak at the moment, would be given an opportunity not in fact to be harassed by this Court, or to be circumvented in her efforts for a trial that certainly in relation to its weight, in relation to its seriousness, would be intercepted by a trial of this nature.

There is no bail for defendant Chesimard. She will be there. The Southern District has all of its options open to it, as I see it, for trial at the termination of the trial in Jersey, and this is what I have not only requested The Court on previous occasions, but which I have also submitted to The Court in my letter to The Court on September 28th, 1973, explaining the reasons for that.

THE COURT: Miss Williams, when did the proceedings for the selection of the jury terminate in New Jersey?

MISS WILLIAMS: Your Honour, October 9th, as I explained to you, or, as I told you, jury selection process began. At approximately three weeks later it terminated. Now, I don't have the date book, so --

THE COURT: Well, approximately. Was it before the end of October?

MISS WILLIAMS: I would think it would be before the end of October, Your Honour. But let me please point out to The Court that there are very serious legal constitutional considerations --

THE COURT: I am aware of those things, Miss Williams, but I was --

MISS WILLIAMS: (continuing) -- that defence counsel has been involved in, and has made motions in relation to.

THE COURT: I am aware of the gravity of the case pending in New Jersey. I am aware of the gravity of the case pending here. I am aware of the fact that we also have here a co-defendant who made an application back in September for an immediate trial, a severance, and so forth, because he was a jail case. He is a jail case. Mr. Freddie Hilton. He is a jail case. And I am not going to have three or four more trials involved in this case. I have already had one, and --

MISS WILLIAMS: Your Honour, I can understand

that.

THE COURT: And I am very disappointed, although it is not going to be taken out on you or your client, but I do want to let you know that I am extremely disappointed about the fact that you did not acquaint me with what happened in New Jersey. I was under the impression all along here that that case was proceeding to trial and it was only within the last week that I ascertained that a mistrial had been declared there, and now as you tell me it was som-time in the end of October or sometime before the first of November, and here we are today is the 28th of November.

We have had an entire month go by, I could have worked this case in. We have a case here that the last time around when we had two defendants, as we are going to have in this case now, a case in which testimony didn't take more than two or three days. It is not a difficult case to prepare.

MISS WILLIAMS: Your Honour, I --

THE COURT: I am disappointed, again, I notified your office and got either your secretary or answering service and no response. You were supposed to have been here, directed to have been here before --

MISS WILLIAMS: Your Honour, may I indicate --

THE COURT: Just a moment, Miss Williams.

You were supposed to have been here before me yesterday. I don't like to do it, I think I respect the fact that you are a busy practitioner, and everybody else is, but I was very seriously yesterday considering a step that I think would be the ultimate step that I would have taken on provocation of directing a marshal to produce counsel here in Court. Now, I --

MISS WILLIAMS: Well, I am sure Your Honour understood that that would not be necessary.

THE COURT: Well, I had no call from you. My calendar had been completely disrupted. I am aware of your problems in New Jersey, but I am going to set this case, give you a few more days because of what is involved here, and this case is going to be set for trial, to commence --

MISS WILLIAMS: May I --

THE COURT: (continuing) to commence on December 34d at 10:00 o'clock. That is next Monday at 10:00 o'clock,and this case is going to proceed to trial on that date, Miss Williams.

MISS WILLIAMS: Your Honour, may I say something?

THE COURT: Yes.

MISS WILLIAMS: I understand The Court's reluctance

to hold this case in a keyance in relation to --

THE COURT: You know I have the record from Second Circuit, and our rules here --

MISS WILLIAMS: Yes, sir.

THE COURT: The District Judges are subjected to the dictates, certainly which I adopt wholeheartedly, of our Second Circuit rules.

MISS WILLIAMS: Your Honour, may I please urge The Court that in view of the fact that defendant Chesimard in particular, I do not represent anyone else in this case, and I am sure that co-counsel, or, counsel for the other defendants will make his own plea to you, but may I point out to The Court very seriously, and this is not in an effort to evade or avoid, which is in fact impo-sible, prosecution of this defendant, or the trial of this defendant before this Court.

All I am requesting is that in view of the by far more serious allegations in Jersey, and the fact that I have been working and other co-counsel, Mr. Raymond Brown from Jersey City has been working in terms of innumerable motions and appeals, etcetera, and since this defendant is without bail in New Jersey, that this defendant certainly is available to The Court for trial at any time.

May I urge The Court, as I have urged on previous occasions, that this particular trial be set down at the termination of the Jersey trial, because, as Your Honour knows, if I am the attorney for this defendant there are just so many things, there are just so many motions, there are just so many necessary investigatory procedures that I personally can be involved in, and that this defendant can be the recipient of, to justify a trial that in fact creates in some small aspect judicial process and justice.

I am in fact urging The Court to put this case over until the termination of the New Jersey case. I will not go into my own personal difficulties in terms of travel and so forth, but I am urging The Court that since I am the attorney for the defendant Chesimard in both Courts, in Both Jersey, this Southern District, Eastern District and other areas in which she is involved, that The Court at least for the perservation of justice and for the preservation of at least, as I believe The Court of Appeals indicated, the appearance of justice in the Mitchell-Stans case, that the Court permit me to continue all of the necessary motions, and they are multiple, all of the necessary exercises in relation to the proper defence that must be presented

before a jury and a Court for the defendant Chesimard in The State of New Jersey, and I do not feel that this Court is going to be jeoprodised in any way.

The defendant is incarcerated. There is no bail set. I simply do not understand, Your Honour, why knowing the circumstances which I have explained to Your Honour on previous occasions, I have a letter in which I have explained also what has happened, that The Court would not permit in fact that this trial be held after the completion of the trial in Jersey.

THE COURT: Well, I will deny that application. This case will proceed to trial on Monday morning, December 3rd at 10: 00 o'clock in Courtroom 318.

All right.

MR. BLOOM: May I be heard, Your Honour, before Your Honour leaves the bench? I should like to point out that I have listened to Miss Williams and Your Honour, and we spoke yesterday in this Courtroom and Your Honour speaks of -- and I mentioned it in Court and I won't repeat those -- the reasons why I am not prepared.

I would just like to emphasize one of those, Your Honour. Again, we are a co-defendant, we cannot be prepared, through no fault of her own, she has

been working day and night, I know that, on another case. She cannot be prepared in three days. We don't even know the identification ituation with regard to Joanne Chesimard which has to have effect. Whatever happens to a co-defendant in a joint trial has to have an effect necessarily on all co-defendants.

Secondly, Your Honour, Your Honour speaks of the rules of this district. I should point out that Mr. Truebner, in his affidavit, pointed out that there are indeed, and of course we know there are indeed, exceptions to the six month rule. Indeed The Court was able to find an exception to the six month rule in ruling on my motion for a severance at a time when my schedule permitted the trial of this case, and the trial of this case without the necessarily unprepared Joanne Chesimard.

That's what I was talking about, and my correspondence to Your Honour makes that clear. What I am saying to Your Honour is --

THE COURT: I don't see how you could be less prepared today when you indicated back in September that you wanted an immediate trial. You must have been prepared then and I don't see how you could be any less prepared now, several months later.

You have been furnished, as I understand, with the transcript of the previous trial in which there was a dismissal as to one defendant, and an acquittal as to the other defendant.

Now you have been furnished, as I understand it, with that transcript --

MR. BLOOM: That's correct.

THE COURT: (continuing) -- sometime ago. And, gentlemen -- excuse me for saying, "gentlemen", that is a customary habit, because it is seldom that we have lady attorneys before us -- but, counsellors, I see no reason whatsoever in all the circumstances, you did make your application, I heard you yesterday, the case is set for trial on Monday, December 3rd at 10:00 o'clock in room 318.

MISS WILLIAMS: Before you leave the bench, I certainly would like to put my objection to Your Honour's ruling on the record.

THE COURT: All right. I have heard and I do know that you will take exception.

MR. BLOOM: May I complete the record, Your Honour? May I complete the record, please, Your Honour?

May the record reflect that His Honour left the

bench and did not wish to hear my continuing statement.

(Time noted: 10:55 a. m.)

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MP

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA versus JOANNE CHESIMARD and FREDDIE HILTON, Defendants.	73 Cr 572

New York, N. Y.

December 4, 1973 - 10:00 a.m.

Before

HON. LEE P. GAGLIARDI,

District Judge.

APPEARANCES:

PAUL J. CURRAN, Esqs.,
United States Attorney for the Southern District of New York
PETER L. TRUEBNER, Esq.,
Assistant United States Attorney

EVELYN WILLIAMS, Esq.,
Attorney for Defendant Chesimard

ROBERT BLOOM, Esq.,
Attorney for Defendant Hilton

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MP 2

MISS WILLIAMS: Your Honor, may I, before we begin, extend my apologies to the Court for being late. Unfortunately, the West Side Highway downtown was a little slower than I had anticipated it could possibly have been. I do have questions for the voir dire. I have other applications to make before the Court.

I have given a copy of this to the assistant U. S. Attorney. I would like to give you the original before I make the application.

THE COURT: All right.

MISS WILLIAMS: Just so we have some appearance of formality.

THE COURT: I do urge upon you again, as I did before, that you be here promptly.

MISS WILLIAMS: I have explained the reasons, sir. I hope you will accept it.

THE COURT: I am accepting your explanation. I am urging you in the future to allow sufficient time to be here on time. We have quite a few people here inconvenienced by tardiness, and I am urging you in the future to be here promptly.

Now --

MISS WILLIAMS: Your Honor, I would like to point out -- I don't want to argue with you, but there has only

been on occasion that I have not appeared here, and it was not not on time; it was not at all.

THE COURT: All right. Now --

MISS WILLIAMS: I would like the record to be straight.

THE COURT: All right. Call the case.

THE CLERK: United States of America versus Joanne Chesimard and Freddie Hilton. Is the Government ready?

MR. TRUEBNER: The Government is ready.

THE CLERK: Is the defendant Chesimard ready?

MISS WILLIAMS: The defendant Chesimard is not only not ready, but there are several applications that must be made.

MR. BLOOM: Your Honor, may I interrupt? I have been informed by one of the marshals in charge of the security that they are not permitting any spectators here other than the press, I understand not until after the jury selection.

First of all, I would object to that, but, notwithstanding that, we have no jury here prior to -- there are just a few out there, only four that I know of. May I ask that they be permitted to enter?

THE COURT: Just a moment. I am going to have the defendants brought up before we let anybody in.

MISS WILLIAMS: Your Honor, may I --

THE COURT: Do you wish to have the defendants present during this argument?

MR. BLOOM: Yes.

MISS WILLIAMS: Yes, sir.

Your Honor, may I supplement that application made by Mr. Bloom by indicating that there are people who are not even permitted into this building if they indicate that they want to come into this courtroom, and I don't think we are living under a Nazi state yet.

THE COURT: I know. I haven't given any such instructions. I know of no such instructions. I am only telling you that during the course of the selection of the jury, because of the fact that we are going to have a number of jurors here and that we haven't adequate facilities, that we are not going to permit spectators during the selection of the jury.

MISS WILLIAMS: In other words, what your Honor is indicating is that this will in fact be an in camera proceeding.

THE COURT: No; I am not.

MISS WILLIAMS: Then are you saying that if there is space left over, that spectators will be permitted?

THE COURT: No.

MISS WILLIAMS: The press is present.

THE COURT: No. Mr. Bloom has requested, and I have granted the request to have the defendants here. Let us have your argument.

MISS WILLIAMS: Your Honor, I would like the Court's indulgence, while we are waiting for the defendants, while I go downstairs and advise the guards that those people who want to come to this courtroom are not to be prevented from coming to this courtroom, either by your order or --

THE COURT: No. I am going to ask you to remain at counsel table until we dispose of these arguments.

MISS WILLIAMS: Your Honor, there are people who do want to appear at the proceedings, who have not been permitted beyond the door of the Federal court building, and I think that is a very serious situation, and I am requesting your Honor -- I am not asking you to utilize any manpower that you may feel that you need --

THE COURT: At our next recess --

MISS WILLIAMS: I am volunteering my services.

THE COURT: At our next recess, I will inquire into that situation.

MR. BLOOM: May I ask that your Honor perhaps direct -- there are a number of marshals here -- there is a telephone at the front desk. If one of the marshals could

call there --

THE COURT: No. Thank you for your suggestion. We are going to proceed with the motions, and we will see where we go from there.

MR. BLOOM: I am not asking -- while we are waiting for the defendants to come up.

THE COURT: I appreciate your suggestion and reject it.

MR. BLOOM: May I make it in the form of an application to insure that it will be a fair and open trial.

THE COURT: This will be an open courtroom.

MR. BLOOM: May I ask your Honor to take the steps to insure that, and I think the steps are reasonable. Is my application denied?

THE COURT: Yes; it is.

MISS WILLIAMS: Your Honor, is there any possibility that the Court can feel that it can give a reason to defense counsel why that application is denied?

THE COURT: Because I want to proceed with these motions very promptly.

MR. WILLIAMS: Is your Honor suggesting that the fact that people are in this courtroom would prevent motions from being submitted to your Honor?

THE COURT: Not at all.

MISS WILLIAMS: -- argued before your Honor?

THE COURT: I don't think you understood that as soon as the defendants are present, we will allow those spectators outside who are there to be present.

MISS WILLIAMS: Your Honor, I have indicated to you that there are people downstairs on the first floor that during the argument of these motions are requesting to be in this court, who are denied that presence.

There will be no opportunity, unless the Court affords us the opportunity, to advise the people downstairs to permit the spectators in.

THE COURT: I have told you that I will inquire about this after we finish what we are doing. All right.

Mr. Bloom, I can see that there is some discussion between you and the chief marshal here. I suggest that you follow the chief marshal's directions as to seating arrangements.

MR. BLOOM: If I may, your Honor, I would prefer it so that the two defendants can sit next to each other, so they can consult. This is a conspiracy case. I see no harm. There are, oh, approximately ten -- approximately ten marshals in the courtroom.

THE COURT: What is the pleasure of the chief marshal?

THE MARSHAL: We would rather have the attorneys sit here and the defendants (indicating) --

THE COURT: Very well, that is the way it is going to be.

MR. BLOOM: Your Honor, I don't understand --

THE COURT: Please, Mr. Bloom. Let us proceed.

MR. BLOOM: Your Honor --

THE COURT: Mr. Bloom --

MR. BLOOM: Yes, your Honor?

THE COURT: Very well.

MR. BLOOM: When I say "Yes", I am saying what is it you wish to say?

THE COURT: I say you shall sit where the marshal desires you to sit. In the event there is a necessity for the defendants to confer together, we will afford them that opportunity.

MISS WILLIAMS: Your Honor, may I join in Mr. Bloom's application?

THE COURT: Yes. There is the same --

MISS WILLIAMS: May I finish my statement?

THE COURT: No. I am making the same ruling.

MISS WILLIAMS: Your Honor, I want my statement on the record, if the Court will so permit it.

THE COURT: No. I don't require it.

What is your preference as to how you are to be addressed? Miss Williams, Mrs. Williams or Ms.?

MISS WILLIAMS: You have asked that before. Call me Ms. You know, you have gone through that five times.

THE COURT: Ms. Williams, you have an application?

MISS WILLIAMS: Your Honor, I renew my application that Joanne Chesimard is not in any way at all prepared to proceed with this trial. I have not had the decision from the Court of Appeals given to me. I have understood from your Honor yesterday that that appeal was denied.

Now, as the Court is perfectly well aware, the defendant Chesimard is on trial on an eight-count indictment. As part of the application that was made to your Honor, part of the application was made to the Court of Appeals of the Federal Court.

It is impossible at this time, since the defendant Chesimard has one attorney, namely me, preparing both cases, as I have indicated to the Court -- there have been innumerable motions; there has been a necessity for all kinds of medical expert witnesses, ballistics expert witnesses et cetera, for me to be prepared to proceed to trial this morning.

Now, I have submitted to your Honor, I believe, 123 requests for questions on the voir dire on behalf of the

defendant Chesimard. I would like the record to reflect and for your Honor to be quite sure of my position that submission of the requests on voir dire does in no way indicate that I am ready for trial or that I am ready to proceed with trial.

Now, I think that the Court certainly is aware of the fact that this defendant as well as the defendant Hilton, although I am not prepared to speak for him; I think he has more than able counsel to talk in his behalf -- that there are multiple charges. I understand that the Court is proceeding in this particular case in relation to the speedy trial concept. I have indicated the exceptions that can be made, which the Court has refused to grant.

At this time, I simply advise the Court that I am not ready for trial. I have not had the opportunity to adequately prepare for this trial, that I have so advised your Honor on innumerable occasions of that fact and as a result of which the defendant is not prepared to go to trial today or at any other time prior to the completion of the trial in New Jersey.

THE COURT: All right. This indictment was returned on June 13, 1973. You appeared before this Court subsequently, as the record will indicate. You have been requested to be excused while the case in New Jersey went to trial. As I

understand it, that case in New Jersey terminated actively before the first of November.

MISS WILLIAMS: On the first of November.

THE COURT: On the first of November.

MISS WILLIAMS: It did not -- may I advise the Court -- Your Honor, I have the papers. The case was not discontinued. It was in fact continued.

THE COURT: The case was terminated --

MISS WILLIAMS: Actual court proceedings, yes. Other court proceedings --

THE COURT: On November 1, 1973. You are a duly admitted practitioner, admitted to practice before this Court.

MISS WILLIAMS: That I am, sir.

THE COURT: There has been more than a sufficient amount of time for you to prepare the defense of this case. I expect that with your competence you will be able to render a full and complete legal defense to the defendant Chesimard, and your application is denied.

MR. BLOOM: Your Honor, on behalf of Mr. Hilton, I have a number of applications.

THE COURT: Yes.

MR. BLOOM: First, now that the defendants are in the courtroom, I would ask that all spectators who are in fact outside of the door be admitted --

THE COURT: Yes. That is certainly permitted. Yes; that is perfectly all right.

MR. BLOOM: Can I get a direction --

THE COURT: Yes; certainly.

MR. BLOOM: Second, I understand, although I do not know of my own knowledge -- from co-counsel that there are a number of people in the lobby or who have been even excluded from the lobby, who wish to come to this courtroom and participate as spectators in this case.

I would ask that the Court direct the security officials, the marshals who are in charge of such matters, to permit all such people in the courthouse.

THE COURT: Yes. Within the dictates of proper precautions for security, we will allow spectators to be present in this courtroom.

MR. BLOOM: Well, your Honor, that is a matter that obviously cannot be disposed of by that language. Indeed, to leave in the discretion of other people, non-judicial people, as to why this consistent security, that has to be done to some degree, but if in fact someone wishes to come into the building and they are asked, "Where are you going?", and they say to the Chesimard-Hilton trial or to Room 318, as the case may be, they are excluded from coming into the building.

If that is true, your Honor, I would think that

that would not be consistent --

THE COURT: I will inquire about it while we are waiting for the jury to come in. Do you have anything further?

MR. BLOOM: Oh, yes, your Honor.

I should point out that whatever proceeds today, I have encountered twenty-one men who I assume are marked with hand weapons, seated or standing in this courtroom, so that with relation to security, I think that the Court and its personnel are adequately protected by men, some of whom were very quick to draw their pistols yesterday in the hallway of the 17th floor when there were three adults and one infant in the hallway, none of whom were armed.

I think we do not have the problem of security that one would expect from all reports that we have, and I would ask your Honor to take cognizance of the fact that -- of the fact of the number of people for security who are here.

THE COURT: All I can suggest, Mr. Bloom, is that I am not in charge of the courthouse. The marshals are in charge of security. I have given them the directions to do whatever they think is required for security in these cases. They have been through these things before, and I am not knowledgeable in the field of security in the courtroom, and I have left it to their discretion. I am sure it will be

exercised with a great deal of discretion.

MR. BLOOM: First I was pointing out how many people there were so the record will so reflect.

THE COURT: Very well.

MR. BLOOM: And secondly, your Honor, as far as potential jurors seeing the security that is set up in this court, I think it must necessarily have an effect on their belief as to the danger presented by one or more of these accused. There can be no other reason. Today is Tuesday. I assume that all jurors who will be called up were at least here in the courthouse yesterday and will be very much aware of the security perhaps in other courtrooms to the extent that it does not exist, and I would ask your Honor preliminarily, before we run into that problem, to treat with that matter.

THE COURT: Well, as I have indicated, the security measures have been left to the security experts, and I am not going to take it out of their hands.

I might suggest to you, Mr. Bloom, I am sure that you are aware that we had a prior trial involving Joanne Chesimard's former husband, Louis Chesimard, at which I presided and at which the jury was selected in that case, and we didn't have any great difficulty in selecting a jury in that case.

MISS WILLIAMS: I would like to refresh your Honor's

memory --

THE COURT: No, please. Mr. Blooms is addressing me, Miss Williams --

MR. BLOOM: I would also say that I witnessed a very small portion of that trial. There were two or three marshals. One of the defendants was in custody: Mr. Stewart. Mr. Chesimard was not, and I am very much aware of the difference between security there and security now --

THE COURT: And one of the witnesses was in custody.

MR. BLOOM: Yes. So the security here is almost many, many multiples of the security there.

Your Honor, I am asking that this case be adjourned for the following reasons.

Now, I have not seen any decision or opinion by the Court of Appeals for the Second Circuit, but I am informed by the newspaper that there was a one-page opinion denying the application for mandamus --

THE COURT: Can I just tell you this: Yesterday I learned from Judge Feinberg, who was the senior judge presiding on the panel -- he telephoned me and informed me that the application had been denied.

MR. BLOOM: I understand that, and you so informed us on the record in your chambers yesterday.

All I am saying is, I understand that in addition

to denying the application, they cited --

THE COURT: Just a moment. I am not going to have any newspapers in this courtroom.

MR. BLOOM: Your Honor, the newspapers are relevant.

THE COURT: They may be relevant.

MR. BLOOM: And there will be an application with regard to the stories in the newspapers.

THE COURT: When they become relevant, you may produce them.

MR. BLOOM: May Mr. Hilton read --

THE COURT: No. I will not have anybody in the courtroom reading newspapers.

MR. BLOOM: May he read a legal document? May he read an affidavit?

THE COURT: You know, Mr. Bloom, that when court is in session nobody is permitted to read newspapers.

MR. BLOOM: Your Honor, we are not talking about casual reading of a newspaper. We are talking about an article that is relevant to the proceedings here.

THE COURT: Well, address yourself to that.

MR. BLOOM: Yes. I will address myself to that. While your Honor interrupted me, I would ask permission for Mr. Hilton to read the article on page 10 of the Daily News and the article on page 13 of the New York Times, which has

his picture in it.

THE COURT: Go ahead. No, I don't want him to read that. He is going to have an opportunity to read the article in the newspapers. Now, I don't want to interrupt the proceedings --

MR. BLOOM: Is he permitted to read an affidavit?

THE COURT: He is not going to be permitted to read a newspaper while court is in session.

MR. BLOOM: He can read an affidavit of Mr. Truebner, which is relevant to the proceedings.

THE COURT: Yes.

MR. BLOOM: Then why can't he read a newspaper which is relevant to the proceedings, which he hasn't seen yet?

THE COURT: Mr. Bloom, don't argue to the Court that way. If you have an argument with respect to publicity, you can make it, but I am not going to sit here while Mr. Hilton reads a newspaper.

MR. BLOOM: One critical aspect is assistance by the accused to his counsel. If he can read that and make suggestions to me, I think it would be most appropriate for him to do so, and I cannot see in any way -- we are not talking about a casual,disrespectful reading of a newspaper so as to disorient one's self from what is happening in court. It is obviously relevant. He is not reading the Macy's

cial or the Kent cigaret commercial --

THE COURT: Mr. Bloom, it is obvious what you are making is a legal argument, not a factual argument.

MR. BLOOM: Of course.

THE COURT: Please address yourself to that.

MR. BLOOM: I was saying your Honor, I understand -- and I have not been served or notified other than by your Honor as to the Court of Appeals decision, but I understand that --

THE COURT: I wish you would not get back to that. You are taking up a lot of time. First of all, there has been no stay issued. This is properly called. This case is properly called for trial. Now, please proceed.

MR. BLOOM: If your Honor will hear the end of my sentence, you would understand what I am saying.

The end of my sentence, your Honor, is that I understand that the Court there, the Court of Appeals, cited the Mitchell decision, where former Attorney General Mitchell and Maurice Stans brought exactly the same request, for the same relief, to that same court. and that the Court indeed did deny the application; however, it strongly suggested to you, your Honor, yourself, who by happenstance was the same Judge, that that case would be adjourned.

I am suggesting to your Honor that indeed the

citation by the Court of Appeals of the Mitchell case is a citation by the Court not only of the holding that there was no jurisdictional issue for the Court to consider but is also a citation of the same language in the Mitchell case, which does not direct your Honor but strongly suggests to your Honor in the Mitchell case that that case be adjourned.

I would ask your Honor to adopt the same approach to the Hilton-Chesimard case that you did in the Mitchell case, where you are faced with exactly the same -- apparently exactly the same mandate, such as it be, from the Court of Appeals.

THE COURT: Well, I have been familiar with the circumstances of the Mitchell case, and I am familiar with the circumstances of this case. I do not think they are at all parallel, and the application is denied.

MR. BLOOM: Now, I would like to tell you why I am not ready for trial.

I am not ready for trial because as co-counsel has stated she is not ready for trial. The reasons why Miss Williams is not ready for trial are totally and completely valid. She has spent day and night working on the New Jersey case and has continued to do so despite the suspension of courtroom proceedings in New Jersey.

But irrespective of whether or not your Honor feels

that she is justified in having not been able to devote any time to this case, the instant case -- irrespective of that, the fact is that co-counsel has so indicated to your Honor that she is not in any way prepared on the facts of this case. That being so, that can only enure to the detriment of my client: Mr. Hilton;

I do not have to tell your Honor, who I assume is an experienced trial attorney and an experienced Judge, that where some parties in a multiple defendant matter are necessarily unprepared and quite correctly unprepared in this case, there can be no possible way that that can do anything but hurt all co-defendants.

Her unfamiliarity with the facts of the case, as to which Miss Williams has made a record, can only hurt Mr. Hilton. That is the first reason, and for that reason alone, your Honor, I ask that this matter be adjourned. That is not the end of my applications, but I believe that each of my applications stands on its own merits.

THE COURT: I see no merit to that application, and it is denied.

MR. BLOOM: Secondly, your Honor, there is a man named Avon White who I am informed by Mr. Truebner is expected to testify in this matter. He was a co-defendant, co-indicted with the defendants here. He pleaded guilty last week, and

I understand -- as I say -- he will be testifying.

I have indications both from his guilty plea here, the builty plea in the Bronx County State case and from other indications that I am not at liberty to disclose, and it may very well be that Avon White has been a police agent for some time.

When I discussed this the other day, I believe Mr. Truebner indicated that he would research that and indicate to the Court what information if any he had about that.

Irrespective, however, of what Mr. Truebner would say about that -- and I am not saying that I would doubt Mr. Truebner's investigation -- far be it from me -- however, to leave my investigation of such a critical matter, which might bring out defenses possibly of entrapment orother defenses, I do not wish to leave that to my adversary.

That is first as to Avon White.

Secondly as to Avon White, Mr. Truebner was kind enough to inform me this morning, I believe late yesterday or early this morning, he learned that Avon White, a Government witness, has spent some time in Mattewan State Hospital for the Criminally Insane, that that person, who is expected to testify against these defendants, his sanity, his state of mind are certainly going to be at issue.

It is something, again, that must be fully explored

before we are prepared to go to trial.

Your Honor, based upon what I have previously briefly outlined -- and I have not gone into detail -- I have briefly outlined as to Avon White, I am asking that this case be adjourned until all parties have the opportunity to research these two issues and others with regard to this prospective Government witness, Avon White.

THE COURT: If Mr. White is a witness on the stand, the Government has certain obligations that they must comply with, and I assume they will comply with them. If they do so, you will know what the situation is.

MR. TRUEBNER: If your Honor please, with respect to the application for an adjournment, rather than rehashing ground which has already been covered, the Government would ask leave to file with the Court at a subsequent time the affidavit which it filed in the United States Court of Appeals, which set forth the chronology in this case relevant to setting the trial date for yesterday.

Secondly, with respect to Mr. Avon White, we learned Friday, pursuant to a telephone call from his probation officer in the Bronx, that he had been sent to the Mattewan State Hospital for the Criminally Insane from July of 1968 to March of '69, when he was returned to Great Meadows Institution to complete service of sentence.

I made that representation to Mr. Bloom this morning because I believe that falls within the continuing mandate to disclose any exculpatory material to the defendant.

I have arranged to have those records subpoenaed from Mattewan, and we ought to have them here certainly by the end of the day or by the time it is time to cross-examine Mr. White.

This was some time ago. There is no question about his competency or anything like that. Indeed, he was returned to the regular institution to finish the service of his sentence.

And as to Mr. White being a police informant for some time, speaking for myself and the office of the United States Attorney for the Southern District, we have virtually no information as to that. The FBI has also advised me that Mr. White surely has not been providing information about any case over a period of time. Indeed, it was not until September 17th of this year that he was arrested, both on local charges and on this charge as well.

Under all the circumstances, we believe that the trial should go forward as scheduled.

MR. BLOOM: Your Honor, dealing still with the issue of my request for an adjournment based alone on the Avon White situation, I daresay -- and I did not mean to say

that Mr. Truebner -- in fact, Mr. Truebner fulfilled his responsibility by this morning disclosing to me the fact of Mr. White's past housing in an institution for the insane, as it is still called.

I am suggesting, your Honor, that merely by looking at a document or a number of documents with which to question Mr. White is not adequate. I need time to investigate, to find out what he did at Great Meadows Institution, to find out what his recovery was, to find out if he did not have any further complications, and indeed for me to find that out

What, indeed, is more significant in our adversary system than that it in fact be an adversary system, where I have the responsibility of exploring my side of the case? I do not in any way doubt Mr. Truebner's sincerity, but I daresay that his pursuit with the same vigor is not to be expected as would be my pursuit and the pursuit of co-counsel.

So I make that application.

THE COURT: All right. If the record from Mattewan will be here as indicated, by the end of the day or perhaps tomorrow, this case is going to take a few days, and I am sure that in your own way you will have adequate time to review the records before Mr. White gets on the stand.

MR. BLOOM: Again, your Honor, it is more than just looking at records.

THE COURT: All right. Your application is denied.

MR. BLOOM: Thirdly, your Honor, I am not ready for trial because of my own personal schedule.

The chronology of this case, as I drafted motions, on July 6th of this year, five months ago -- a few days ago, five months later, these motions were decided by your Honor. But prior to that, your Honor, I sent at least one letter indicating that defendant Hilton wished to proceed with his motion for a severance, wished for a trial which was at a time which would have been without co-defendant, whose attorney was preparing for a New Jersey trial and was not preparing the facts in this case.

It was before Avon White, before the Avon White situation was known. It was at a time when my personal schedule permitted the trial of this matter. I wrote to your Honor indicating that Mr. Hilton was ready for an immediate severed trial. I called your office five, six, seven, eight times, perhaps, spoke to Miss Penetta almost every day during early September -- I believe it was early September. I may be mistaken about the particular time -- asking if there had been a decision on the particular motion. There was no decision.

The next thing, we had a pre-trial conference, and everything was left open as to when the trial date would be.

Apparently then your Honor learned what your Honor thought or thinks is the termination of the New Jersey trial of the defendant Chesimard, which is in fact, as I see it, a suspension which has required a good deal of work, in fact even more work from co-counsel in this matter, and, in any event, after learning of that, your Honor then, without ever consulting me or co-counsel, set the trial date for December 10th.

I explained to you, your Honor, off the record, after there was an arraignment in another case, independent of this, that that was a difficult date for me because of my family situation, and specifically I am separated from my wife; I have a four-year-old son I expect to take on vacation for a week beginning on December 12th.

Your Honor then, again without consulting myself or co-counsel, set this trial down for last Wednesday for trial, November 28th, with a pre-trial conference on November 27th. In that instance I informed the Court; I came in on Monday, the 26th, and informed the Court that I could not be ready, that I had personal problems in scheduling. In fact, tomorrow, in State Court there are four different cases on the calendar where defendants in court expect me to be there. I have a matter that is marked peremptorily for trial in Queens County Criminal Court, which has been put over and put over, much

to the distress of all parties defendant, witnesses for the prosecution, the prosecutor and the Judge, which is to begin trial Thursday, the day after tomorrow.

I have matters on Monday, and I have matters on Tuesday. I cannot, your Honor, keep my mind on this trial while I have about ten different clients I have to satisfy, which means about ten different judges I have to satisfy. It is a most difficult thing for me, your Honor. It is distressing and upsetting that your Honor did not consult with me on setting either trial date, and I know your Honor did not consult with co-counsel, either.

I will tell your Honor that it is most difficult for me and going to be impossible for me to devote my attention, my full attention to this case, and on that basis, your Honor, alone, I ask that this matter be adjourned.

THE COURT: Well, Mr. Bloom, I deny that application. You had asked for an immediate trial back in September, and obviously if counsel had informed me in November that there had been a suspension in the Joanne Chesimard trial in New Jersey, this case would have received first priority on my calendar, and we could have arranged for a schedule then.

You called me personally and informed me that you had a family problem with respect to December 12th. You informed me that if the case could be moved up -- I informed you that you would have to concentrate on the case on trial

and the other judges would have to recognize your actual engagement before me.

From the previous trial before me and the amount of testimony involved, it is indicated to me that this should be no more than a three- or four-day trial. I think that you are not accurate when you say that you cannot be prepared for this trial, and that application is denied.

MR. BLOOM: What I said is that it would be impossible for me to devote my undivided attention to it, and I should point out that when I say I was ready in September, at least three conditions were different then.

Fourthly, your Honor, I ask for an adjournment for the following reason:

The motion that I made on July 6, 1973, sub-division 5 thereof, dealing with electronic eavesdropping, dealt not only with electronic eavesdropping of the defendant, a matter as to which Mr. Truebner has addressed his affidavit of November 30, 1973, but also dealt with any eaves dropping or overhearing of his alleged co-conspirators, which include Joanne Chesimard, Avon White, Louis Chesimard, Paul Stewart, Johnny Rivers, a gentleman known as Rees -- any of those people, your Honor, and, in addition, his attorney, me.

Indeed, in another matter in this court, United States versus Luis Otero, which is before the Hon. Judge

Frankel, Judge Frankel directed the assistant United States Attorney, Mr. Nesland, to conduct an investigation of various law enforcement agencies to see if not only the defendant had been overheard but indeed if his counsel, once retained, had been overheard.

THE COURT: I would ask, Mr. Truebner, would you respond as to whether any conversations of Mr. Bloom have been overheard?

MR. TRUEBNER: Absolutely not to my knowledge, your Honor. I filed an affidavit which deals with the defendant Hilton, but we have received no information from any source whatsoever obtained by electronic surveillance which plays a part in this case, either in the grand jury stage or the trial or anything else.

THE COURT: And specifically no overhearing of any conversations of Mr. Bloom, in any way?

MR. TRUBNER: In any way. That is correct, your Honor.

THE COURT: I accept your representation. If you want to supplement the record with an affidavit to that effect, you might consider doing so, but I accept your representations.

MR. TRUEBNER: Very well.

MR. BLOOM: Your Honor, in that regard, I think

Mr. Gross, who was at one time in the prosecution of the case -- I told him that I know of the fact that there was a court-ordered wire tap by the Supreme Court in Queens County of a woman, Janet Ciro. I spoke with her on the telephone at least fifteen times. I spoke with Mr. Gross about that, and I daresay that although Mr. Truebner tells us what he does know, that it is not adequate under the law as it stands now.

Indeed, Mr. Truebner in his affidavit with regard to whether or not the defendant Hilton had been overheard, lists certain agencies, the agencies being the FBI, the Secret Service, Internal Revenue, Bureau of Alcohol Tax & Firearms, the Postal Service and Customs. He doesn't list the White House plumbers, the CIA, the CID, any New York State or any New York City agency.

It is, as I understand, the state of the law with regard to the requirement first that there needs to be an affidavit from the Department of Justice. Secondly, it need cover the attorney and alleged co-conspirators. And I should point out that in this very district it was asserted by an assistant United States Attorney with regard to one Arthur Kinoy, who is an attorney, that there was no eavesdropping, no overhearing, just as it was by Mr. Truebner, while it turned out that that assistant was mistaken, that I believe Mr. Seymour --

THE COURT: We know what occurs in the event that we have a misrepresentation here, but in the first instance I accept the representation, and I am satisfied, myself, by the representation that there is no need at this point to go any further, Mr. Bloom.

In the event that there is a subsequent disclosure, in the event of a certain result in this case, why, that would be, as you know, grounds for upsetting any such result.

All right, then --

MR. BLOOM: Your Honor, with yesterday's experience in the Court of Appeals and my experience with various appellate courts, it is not Mr. Hilton's experience that he can rely on the appellate courts of this country.

THE COURT: Your application is denied.

MR. BLOOM: I ask that page 13 of today's New York Times and page 10 of today's Daily News be received by this Court as exhibits for identification.

THE COURT: Yes. They will be received as exhibits for identification.

MR. BLOOM: May I ask that the Daily News be deemed marked --

THE COURT: No. We will actually mark it.

MR. BLOOM: Pardon me?

THE COURT: We will actually mark it.

MR. BLOOM: Very well.

THE COURT: If you will hand it to the Clerk, he will mark it.

Mr. Bloom, if you will hand it to the Clerk, he will mark them.

MR. BLOOM: I will, your Honor. Usually, in the courts in which I practice, a court officer would come up --

THE COURT: The Government can't afford the luxury of that.

MR. BLOOM: No. We only have twenty-one security men in the courtroom.

THE COURT: That's right.

(Defendant Hilton Exhibit A marked for identification.)

(Defendant Hilton Exhibit B marked for identification.)

THE COURT: Just for the purposes of this proceeding and not for the trial.

MR. BLOOM: No; for this application.

THE COURT: All right. I will take them.

MR. BLOOM: When your Honor reads them, I would like to refer to them.

THE COURT: I will consider them.

MR. BLOOM: May I refer to the particular language

of it? I would like to read into the record the particular language.

THE COURT: Well, they are part of the record.

MR. BLOOM: Your Honor, in the Daily News article there is a photograph of Mr. Hilton and a photograph of Joanne Chesimard. It talks about other cases. It talks about an agency known as the Black Liberation Army. It talks about a number of things, your Honor, that can do nothing but poison the atmosphere in which these defendants are supposed to go to trial today.

I cannot see, your Honor, how in view of that publicity and the publicity as to which I referred in my original motion of July 6, 1973, how that publicity and the publicity which was brought to your Honor's attention in the trial of Lewis Chesimard and Paul Stewart can indeed do anything but cause this court to delay this case until a later date.

We are not ready; we have various problems, and I have pointed out that to the Court and will not repeat them, and we have this publicity today, which is deadly.

THE COURT: I think I can take care of the publicity only after I have interrogated the jurors to ascertain whether they have seen or heard or know anything about this matter, and I will do that in my usual voir dire.

MR. BLOOM: I daresay, your Honor, that, as I under-

stand the law as enunciated in the Shepard case, it is not relevant whether a particular joror or all jurors read anything about the particular case, although that would be one factor. Indeed, in the Shepard case, the ruling of the Supreme Court of the United States was that the reporting, reportage of that particular case --

THE COURT: Mr. Bloom, let me suggest to you that I have had a great deal of law submitted to me. I think the entire body of law with respect to pre-trial publicity -- and I think I am familiar with it; I don't think I need anything more said on that, really.

MR. BLOOM: I understand that.

THE COURT: You have made your point. You have preserved your record, and that is all that we need to hear, and I will see when I interrogate the jurors as to whether or not there is any validity to the fact that pre-trial publicity here has in any way prohibited or prevented these defendants at this time from obtaining a fair trial.

Is that all?

MR. BLOOM: Well, that is all except for a ruling on my application to adjourn based upon the publicity.

THE COURT: Well, that I can only ascertain after we have started to select the jury. I deny it in the first instance.

All right.

MISS WILLIAMS: Your Honor, may I be heard?

THE COURT: I think you have --

MISS WILLIAMS: I ask this --

THE COURT: Miss Williams, you had full opportunity to make all of your motions. I have heard them all, and I really --

MISS WILLIAMS: I would like to point out to the Court that all motions on behalf of the defendant Chesimard have not been made. The motions have not been made, for reasons which the Court is, I would assume, perfectly knowledgeable about.

Number two, I am requesting at least a very short postponement in this case so that motions can be made to this Court which go to the jurisdictional faction -- factors, which go to constitutional factors that relate to both of these defendants, at least the defendant Chesimard.

THE COURT: You know that those motions, Miss Williams, should have been made within the time prescribed by the rules, and, not having been made, they are deemed waived, Miss Williams.

MISS WILLIAMS: Your Honor, the rules of Federal practice for the Southern District -- The Court will understand that there are certain motions that may be made prior

to trial, and there is no time limit.

Now, I understand that there is a ten-day period within which some applications must be made, but those applications that go to the very jurisdictional concepts, that go to the very constitutional questions about which we are and may very well be involved, either here at this trial or in the appellate courts, can be made at any time prior to trial and prior to the selection of the first juror.

THE COURT: Now, I --

MISS WILLIAMS: I am simply requesting that since the Court has demanded an immediate trial, understanding the burden under which the defendant Chesimard's attorney has been put, that at least a one-day adjournment be granted, so that those particular issues, those particular applications be presented to the Court for the Court's decision and determination, and I do not understand how the people's case is going to be in any way jeopardized by a one-day delay.

Now, there are certain motions, and your Honor is very well aware of the fact that there are certain motions, that I can make any time prior to trial. Your Honor is also aware of the fact that if those motions are not made prior to trial, that the defendant is precluded from making those motions after trial or after a juror has been selected.

Now, if your Honor is indicating to me that you are

not going to give me an opportunity of one day to present those motions to the Court, thereby precluding this defendant's opportunity, possibility to preserve her right on appeal, then I would like for you to so state that to the record -- in the record.

THE COURT: Miss Williams, your appearance was noted in this case back in -- Do you have that at the moment? I don't have the docket here --

MR. TRUEBNER: If your Honor please, the Government has a copy of a notice of appearance, evidently signed by Evelyn Williams for Joanne Chesimard, which has been date stamped in our office August 15, 1973.

I believe the appearance, first appearance, in court was on the first of August, the time in which this defendant was arraigned.

THE COURT: Yes. And, Miss Williams --

MISS WILLIAMS: Thank you, Mr. Truebner. I won't argue the dates.

THE COURT: I assume that is reasonable accurate.

MISS WILLIAMS: May I say that on each occasion I have advised the Court of my active involvement in the New Jersey case, which contains eight counts, two counts of murder, one of attempt to murder and other counts of an assaultive nature with the intention to kill, with the posses-

sion of firearms et cetera.

I advised the Court there were at least nine motions, ten, fifteen motions that had to be prepared.

THE COURT: I am aware of that.

MISS WILLIAMS: On each of the occasions that I have appeared before your Honor, regardless of which I have advised your Honor of my committed obligation, my committed responsibility to pursue those motions in the State of New Jersey -- the Court will notice that the date of this indictment, or at least the date on which this indictment was returned was June 13, 1973. The case on which I began working was May 2, 1973, and I have requested the Court to at least permit me to continue with that on-going situation that began. This defendant was hospitalized for two months. She is still a sick woman. She is now in a psycho ward, under alleged Federal detention facilities.

There are many motions that need to be made in this case, but there are certain basic motions that go to the constitutional issues that if the Court does not permit me to make prior to trial, this defendant will be precluded from making on any appellate situation, and this is why I am requesting one day.

I am prepared to stay up all night to get those motions basically ready.

THE COURT: No --

MISS WILLIAMS: However, except for the change of title et cetera, I say that the Court will lose nothing but one day.

THE COURT: No --

MISS WILLIAMS: The Court is saying that you are not going to permit this defendant to take advantage of --

THE COURT: I am not saying that at all.

MISS WILLIAMS: Well, what are you saying?

THE COURT: I am saying that there has been more than adequate time to present any motions that are required to be presented to the Court before now.

DEFENDANT CHESIMARD: Before you call the jury, there is something -- there is a statement that I have to make.

THE COURT: Now, Miss Williams, I am sure that you will be able to impress upon Miss -- Mrs. Chesimard --

MISS WILLIAMS: That is always a problem, somehow.

THE COURT: Now, I am sure that you will be able to impress upon her the necessity of comporting herself in a dignified manner in this courtroom and of what possible consequences there will be of failure to do so, that she is represented by counsel and to let counsel at all times do the talking for her.

MISS WILLIAMS: I am sorry, sir. Perhaps it was too strong for my ears, but I missed your last statement -- that she not be afforded the opportunity --

THE COURT: No. I am saying -- I am saying that she is represented by adequate counsel here, that counsel alone will be permitted to speak, to make any statements, and the alternatives to that are well known to everybody, and I do not wish to get into that, and that is what I wish to avoid, and this is the first instance that we have had to bring it up, and I suggest that you inform Mrs. Chesimard of what the possible consequences of any courtroom outbursts may be.

All right.

DEFENDANT CHESIMARD: The consequences of the injustice in this court is a railroading, and this is a railroad. Wait a minute, now --

THE COURT: We will clear the Court.

DEFENDANT CHESIMARD: No. I have sat here for forty-five minutes, listening to nonsense.

THE COURT: We will clear the court, and will you call and ask them to bring a panel of jurors.

DEFENDANT CHESIMARD: This is a railroading. We are not prepared to go to trial --

(Recess.)

MP 41

THE COURT: We will clear the court of spectators, and will you call and ask them to bring a panel of jurors.

DEFENDANT CHESIMARD: This is a railroading. We are not prepared to go to trial.

(Recess.)

(In open court:)

(A panel of prospective jurors was sworn.)

MR. BLOOM: Your Honor, before we proceed, may I respectfully ask that the friends and relatives of the defendant be permitted in the courtroom? There are present only jurors, press and police officers.

THE COURT: Well, I don't think we have enough room yet. As soon as we can accommodate them, why, we will permit them to do it, as soon as we can. As a matter of fact, after we call the first twelve jurors, why, we will have some room in here.

MR. BLOOM: I have spoken to each of them out there. Each has indicated, just as some of the members of the press back there --

THE COURT: How many are there?

MR. BLOOM: There are approximately, I would say, twelve to fifteen.

THE COURT: No. That is too many. We don't have room.

MP 42

MR. BLOOM: They can stand around the sides of the room.

THE COURT: No. I am not going to permit that.

MISS WILLIAMS: Is your Honor objecting to the number?

THE COURT: The courtroom is entirely full. In a very short period of time we will have some seats available, and we will be able to accommodate your request.

MISS WILLIAMS: Yes, sir. I would like the Court, however, to take judicial notice of the fact that there are in fact seats and room for spectators to sit.

THE COURT: Well, that is inside the rail, and I don't permit that.

Call the jurors.

DEFENDANT CHESIMARD: Your Honor, I have a statement to make, and I would like to make it now.

THE COURT: Call the jurors, please. I am sorry --

DEFENDANT CHESIMARD: I have to do it, because I know that youhave conducted this trial so far in an unfair manner, and you have done --

THE COURT: Miss Williams --

DEFENDANT CHESIMARD: -- and you have done everything possible to insure that we do not get a fair trial. This is a railroad.

(Four prospective jurors were called by the clerk and seated in the jury box.)

DEFENDANT CHESIMARD: We are not prepared to go to trial. We are engaged on trial in New Jersey. I am not prepared to go on trial here. You have refused all our motions in this case. You are not concerned with justice. You are not concerned that we get a fair trial. You have done everything conceivable to obstruct justice.

THE COURT: Mrs. Chesimard --

DEFENDANT CHESIMARD: You have made a deal, a deal with the prosecution, a deal with New Jersey officials, a --

THE COURT: Mrs. Chesimard --

DEFENDANT CHESIMARD: -- deal to railroad us.

THE COURT: Mrs. Chestimard, will you let us proceed?

DEFENDANT CHESIMARD: You are proceeding under --

THE COURT: Mr. Marshal, will you remove the defendant from the courtroom, please?

MR. BLOOM: Come, now, for Heaven's sake, she's a woman. Do you want to grab and drag a woman out?

MISS WILLIAMS: Don't you put your hands on her. This is a sick woman. Now, if you want her to leave, she can leave. You don't have to grab her like a god-damned animal.

MP 44

THE COURT: Marshals --

MISS WILLIAMS: The woman is sick.

DEFENDANT CHESIMARD: This is injustice. It's not right.

MISS WILLIAMS: Don't you put your hands on her.

MR. BLOOM: Your Honor, excuse me. Will you instruct the marshals there is no need for this? He is not doing anything but standing there. Will you direct them to stop it? He has been standing there, doing nothing.

MISS WILLIAMS: Your Honor, this is a sick woman. This woman has a bullet in her chest. She has a severed median nerve. There is nothing to justify five people dragging her out of this courtroom.

THE COURT: Mr. Hilton, will you remain seated? All right.

MR. BLOOM: Excuse me, your Honor. Mr. Hilton has indicated to me earlier that if this trial proceeds, he does not wish to be present. He feels there is great injustice because of the reasons stated earlier as to why we cannot possibly be prepared.

THE COURT: You will have to make this application in the absence of the jury.

MR. BLOOM: I just want to avoid --

THE COURT: You may make your application, and you

may make your statement when the jury is not present. I direct you not to make any further statement in that connection.

MR. BLOOM: I just want to say one thing, your Honor.

THE COURT: Mr. Bloom --

MR. BLOOM: I just want to avoid injury. He wants to be taken out without injury.

MISS WILLIAMS: The defendant Chesimard, I want on the record, is a sick woman, has been injured by the animal treatment of her by these U. S. Marshals.

THE COURT: Miss Willia[illegible], will you please be seated?

MISS WILLIAMS: I will be seated, sir, assuming that five people do not grab me.

THE COURT: Miss Williams, will you please be seated?

I am going to ask the jurors to return to the Central Jury Room, to remain together as a panel, and we will call you back very shortly.

(The panel of prospective jurors left the courtroom.)

MISS WILLIAMS: Your Honor, I would like permission to see the defendant Chesimard immediately in order to see whether or not she can physically stand trial in this courtroom as a result of what these U. S. Marshals are doing.

MP 46

THE COURT: The Court directsyou to remain seated and remain quiet.

MISS WILLIAMS: I will respect your Honor's opinion as long as you respect my application.

THE COURT: I direct you to remain seated, Miss Williams.

MISS WILLIAMS: I will, your Honor, under those conditions.

THE COURT: Miss Williams, the Court directs you to be quiet.

MISS WILLIAMS: I am quiet, sir. I am speaking to my co-counsel.

Will you entertain an application from defense counsel?

THE COURT: The Court is informing you that this case will proceed to trial whether in the presence or the absence of the defendants, as they may choose to elect. You have an obligation as a member of this court, as a practicing attorney to inform your client --

MISS WILLIAMS: I prefer to stand while you are addressing me.

THE COURT: You should stand when the Court is addressing you, and I see that it did take a few minutes before you did that.

MISS WILLIAMS: I took a few minutes only because I did not understand that the Court was going to make a statement. I thought that I would be apprised of the fact first that the Court was going to make a statement to defense counsel.

THE COURT: I take no offense at it.

MISS WILLIAMS: Naturally.

THE COURT: On the other hand, I am informing you that your client has a right to be present at these proceedings, but your client has a right to be present at these proceedings and seated next to you only in the event that she conducts herself in such a way that will not interfere with these proceedings proceeding in a fair, deliberate way, without obstruction, without outbursts, without violence, and I have no desire whatsoever to take the steps that are permitted to be taken by a court where defendants do not comport themselves in accordance with the prescribed rules of conduct in this court, and I am going to have Miss -- Mrs. Chesimard and Mr. Hilton brought back in here and explain to them their options, and if they are going to elect to comport themselves in the manner in which they have already done at this very first opportunity when we have had a jury, a prospective jury present, that they face the consequences of either being present in court in such a manner that their outbursts will

be confined to an absolute minimum, or they may elect, if they so choose, to have this case proceed without them being present in court.

All right. Would you bring in --

MISS WILLIAMS: If the Court please --

THE COURT: Just a minute, Miss Williams. I want the defendants brought here.

MR. BLOOM: I ask that that be done without violence. There was no violence on the part of the defendant or the co-defendant. The defendant was grabbed --

THE COURT: What happened I do not know, although I did observe at the moment that I had directed that the marshals restrain Mrs. Chesimard, there appeared to me to be some effort on the part of Mr. Hilton to get out of his chair. What happened after that, happened so quickly that I don't think anybody can give a description of it.

Please be seated. The defendants are being brought into court. Please be seated. I expect certainly that you and Miss Williams will obey the directions of the Court.

MISS WILLIAMS: Your Honor, I state that I have an application to make to the Court, and I would like to be heard.

THE COURT: And I am saying that we will wait --

MISS WILLIAMS: And I cannot be heard. Is that what

you are saying?

THE COURT: We will wait until the defendant is being brought up.

(The defendants entered the courtroom.)

MISS WILLIAMS: Now, may I make my application? This is my client. Do you mind --

THE COURT: Just a moment. You will have an opportunity to make any application you want.

MISS WILLIAMS: I want to make my application right now.

THE COURT: I am directing you to be seated, Miss Williams.

MISS WILLIAMS: Your Honor, I have an application that I want to make.

THE COURT: Miss Williams, I am directing you to be seated.

MISS WILLIAMS: Do you want me to make the application while I am seated, or are you denying me -- are you ordering me not to make the application in the presence of the jury?

THE COURT: Please be seated.

MISS WILLIAMS: For what purpose?

THE COURT: You will have adequate time to make your application.

Now, Mrs. Chesimard --

MISS WILLIAMS: I will not permit Mrs. Chesimard to make any statement to the Court unless I have been informed of the questions that are going to be asked --

THE COURT: Miss Williams --

MISS WILLIAMS: -- and I have an opportunity to advise her of her rights.

THE COURT: Miss Williams, will you please be seated?

Mrs. Chesimard, you have a constitutional right to be present at your trial. That constitutional right means that you have a right to be here but not in such a way that you will disrupt the orderly proceedings of this court.

This is the first opportunity that you have been in this court when prospective jurors have been here. Your outburst disrupted --

DEFENDANT CHESIMARD: It was not an outburst.

THE COURT: Well, your statement --

MISS WILLIAMS: Be quiet.

THE COURT: Your statement disrupted the orderly proceedings of this court. I will give you the opportunity to remain in this court while we are proceeding with the trial of this case if you can assure me that we will have no further outbursts on your part and that you will permit us

to proceed in such a way that the procedures of this court will not be disrupted.

There are alternatives available to me. I would have expected that prior to this time Miss Williams would have informed you what those alternatives would be. Those alternatives are very distasteful to this Court to employ. I have no desire to do them.

On the other hand, you have been charged by a grand jury with violating the law here, and it is my obligation to see that we have a fair and just trial in this case, and it is my obligation to see that the proceedings in this trial are comported before this jury in such a way that your rights and the rights of the United States of America are preserved.

Your failure to observe the rules and regulations of this court and outbursting as you did in making statements that are without -- in making any statements in this court or without speaking through your attorney may well result in your being bound and gagged while you are here, and that is a most distasteful experience to go through. I have absolutely no desire to do that to you.

I assure you, on the other hand, that I am solemnly aware of my obligations as Judge to see that this case proceeds to trial. The alternative that you may have is to

absent yourself voluntarily from these proceedings if you so desire and have the trial conducted in your absence.

Mr. Hilton, you did not make a verbal outburst. I have no reason to know whether or not you will. You may very well, but I have no reason to believe that you will act other than in a proper manner here, and so I am not giving you any instructions. I am sure that you have heard what I had to say to Mrs. Chesimard.

There was some indication by Mr. Bloom that you desired not to be present during this trial. I don't know whether that was a spur-of-the-moment offer on your part, Mr. Bloom, or not, but I suggest to you that you have a constitutional right to be present, to be represented by counsel of your choise, and you are being represented by counsel of your choice.

It is a very important matter for a defendant in a case to consult with his attorney. He may very well help him in connection with some of the testimony that is adduced here through witnesses on the stand, and your presence in here would have a great deal to do with your enabling Mr. Bloom to properly and adequately represent you in the defense of your case.

However, as I have said, as you have heard me say to Mrs. Chesimard, we cannot permit, nor will I permit, any

disorderly disruptions of the procedures of this court.

Now, I urge you --

MISS WILLIAMS: Is your Honor finished?

THE COURT: I urge you that you remain in this courtroom during this trial and assist your counsel as best you can, but I assure you that in the event that we have disruptions in the orderly procedures of this court, I shall take those steps that I would most regretfully take, that I would most regret taking in this case but which I will be forced to do in the event that events so direct that I should take.

MISS WILLIAMS: Your Honor --

THE COURT: Yes, Mr. Truebner --

MR. TRUEBNER: If your Honor please --

THE COURT: You will have your time, Miss Williams.

MR. TRUEBNER: The law is quite clear, both in this Circuit and elsewhere, that the defendant has no right, constitutional or other, to voluntarily absent himself from his own trial, so I just wanted to make clear that the defendants do not have an option here. It is only in the event that they are going to persist in the outbursts such as we had a moment ago, or in the disruptions, that they then will have to be removed from the courtroom.

But simply because they don't want to be here, the law is clear -- I don't have the citation right offhand.

There is a Federal rule on it, I believe, and they are required to be present throughout the proceedings and the trial.

THE COURT: As I said, one outburst, and I am not going to -- I think it is clear that just one outburst without the proper admonition is not sufficient to do what I am permitted to do.

Yes, Miss Williams?

MISS WILLIAMS: At this time, will the Court provide me an opportunity to make a statement, which I have attempted to make for the past twenty minutes?

I want the record to reflect, number one, as I have repeatedly advised this Court, that the defendant Chesimard has a bullet in her chest, and her median nerve is severed and that five people, five U. S. Marshals, grabbed her as if she were an animal. She made no threat. She was sitting alongside of me. She was making a direct statement to you, and I am not discussing the validity or the invalidity, the correctness or the incorrectness of the statement, but she was making no move of any form of violence.

I want that to be on the record, number one.

THE COURT: Well, I am not certain that that is an accurate statement of what transpired here.

MISS WILLIAMS: Well, I would like to know what she was doing, if the Court doesn't think it is an accurate state-

ment. Will the Court please advise me what the defendant Chesimard was doing to justify five men grabbing her, with a bullet in her chest, with a severed median nerve, and directing her out of this courtroom?

THE COURT: She was failing to follow the directions of this Court.

MISS WILLIAMS: Yes, but what was she doing? Do you think she has concealed within her a carbine, that she perhaps brought up after specific examination, from downstairs in the U. S. Marshal's office?

THE COURT: Let's proceed --

MISS WILLIAMS: Your Honor, I am not arguing with you. I am making a plea for a defendant --

THE COURT: You are reaching the point where you are arguing with me.

MISS WILLIAMS: Well, I man then have to do that, sir, but I am defending a client, and I intend to defend that client, and I will not permit that client to be abused by the United States Marshals, by your Honor or by any other agency in this country.

THE COURT: In my presence that --

MISS WILLIAMS: And I think that is absolutely in your --

THE COURT: In my presence, that will not be per-

mitted.

MISS WILLIAMS: In your presence, you permitted this woman to be pulled, dragged by her arm, and I am requesting an adjournment -- this is my basic application -- for her to be observed by a doctor, for whose expense I will pay, to determine whether or not the seriousness of the injury caused by these U. S. Marshals pulling her arm and dragging her from her chair --

THE COURT: All right. We will adjourn until two o'clock. I have instructed the jurors to be back here at two o'block. I expect you back here promptly. We had a second occasion this morning, Miss Williams, when the jurors were here and you were ten or fifteen minutes late.

MISS WILLIAMS: Your Honor, I have been through that. If you are going to repeat that every minute, then I will also repeat that I was attempting to find you yesterday morning for one hour, and you could not be found. You had locked your door. You had permitted nobody to come into your chambers, in the area in which your chambers are located.

So that if your Honor wants to suggest to me that I was a few minutes late today for the first time before this court, then your Honor may do that. I will also put on the record that you were not to be found yesterday morning, even though --

MP 56(a)

THE COURT: The Court stands adjourned until two o'clock.

(A luncheon recess was taken.)

MP 57

AFTERNOON SESSION

2:15 p.m.

THE COURT: Call the jury panel, please.

Mr. Truebner, I did a little research at the luncheon recess, and I am satisfied that the defendants cannot voluntarily absent themselves under these circumstances from this trial, so that option is not available.

I do, however, with to -- You may be seated.

MR. TRUEBNER: Thank you.

THE COURT: I do, however, wish to address the defendants and the defendants' counsel and read from Illinois against Allen, 397 U. S. 337, in which in the state court, the defendant, representing himself there, had court-appointed counsel. When he did not behave himself in the manner which the court thought was appropriate for a trial, and during the course of that trial the defendant argued with the Judge in an abusive and disrespectful manner and made various remarks about the ability to get a fair trial and so forth, and eventually the Court found it necessary to put the defendant in shackles, a straitjacket and to gag the defendant.

The Supreme Court of the United States indicated that the defendant's Sixth Amendment rights to be present at his own trial had certain conditions upon them and gave these cautionary instructions.

"Always mindful that courts must indulge every reasonable presumption against the loss of constitutional rights, we explicitly hold today that the defendant can lose his right to be present at trial if after he has been warned by the Judge that he will be removed, if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive and disrespectful of the Court that his trial cannot be carried on with him in the courtroom.

"Once lost, the right to be present can, of course, be relcaimed as soon as the defendant is willing to conduct himself consistent with the decorum and respect inherent in the concept of courts and judicial proceedings.

"It is essential to the proper administration of criminal justice that dignity, order and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges, confronted withdisruptive, contumaceous, stubbornly defiant defendants, must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations. There are three constitutionally permissible ways for a trial judge to handle an obstrep-

erous defendant: one, binding and gagging him, thereby keeping him present; citing him for contempt; take him out of the courtroom until he promises to conduct himself properly.

"Trying a defendant for a crime while he sits bound and gagged before the Judge and jury would to an extent comply with the Sixth Amendment purposes that accord the defendant the opportunity to confront witnesses during the trial, but even to imply such a technique, much less see it, arouses a feeling that no person should be tried while shackled and gagged, except as a last resort.

"One of the defendant's primary advantages of being present at trial -- his ability to communicate with his counsel -- is greatly reduced when the defendant is in a condition of total physical restraint. However, in some situations, which we need not attempt to foresee, binding and gagging might possibly be the fairest and most reasonable way to handle a defendant who acts as Allen did here.

"The availability of contempt" -- and I don't under the circumstances as they presently exist here, feel in any way that citing for contempt would be an appropriate way of dealing with any future outbursts in this case -- "and the third alternative is to remove the defendant from the courtroom and continue his trial in his absence until and unless he promises to conduct himself in a manner befitting an

American courtroom."

I am calling these matters to the attention of everyone, giving you the appropriate opportunity to indicate by your conduct in this court that you will behalf in a manner which befits a trial, a fair trial to you, and your failure to behalf yourselves may well result in my taking those steps that I find necessary to continue the trial.

All right.

MISS WILLIAMS: May I be heard?

THE COURT: No. I don't think it calls for anything at all, Miss Williams, unless you are going to indicate to me that you wish to state that the defendant has indicated to you that she will comport herself in a proper manner here.

MISS WILLIAMS: Your Honor, I think that the Court has made many statements that certainly necessitate, as far as I am concerned, as counsel for the defendant Chesimard, a small response, a limited reply.

I do not intend or anticipate taking up the time of the Court.

I would also like the Court to be advised of the fact that I was here promptly at two o'clock, and the Judge did not sit until two-fifteen.

THE COURT: Let us not get into this. I was here at two o'clock, and my clerk indicated to me that you were not

present at two o'clock, and when I was informed that you were here, then I came out on the bench.

Now, please, let's --

MISS WILLIAMS: Your Honor, you have referred to a case that is quite different from the situation that existed this morning on behalf of the defendant Chesimard. You have described explicitly by referring to that case her actions as being obstreperous and prejudicial to the interests of justice.

I would like for the record to reflect that the defendant Chesimard was simply attempting quietly, with neither leaving her seat, making no threatening gestures, to address the Court, to make a statement that she felt was certainly within the interests of justice and not only within the interests of justice but within the interests of her particular concern.

She is a defendant in this case with the defendant Hilton. I do not believe that the case that your Honor has cited in any way relates to the particular situation that your Honor was faced with this morning or necessitates the kind of alternatives or the kind of punitive -- well, I suppose promises that your Honor has indicated that you will fulfil.

THE COURT: All right. Let me suggest this: that

all that will be permitted to address the Court will be counsel.

All right. Bring the jury in. You may be seated.

MR. BLOOM: May I take thirty seconds, your Honor?

THE COURT: No. The jury is coming in.

MR. BLOOM: I think it will save a lot of trouble if I can. I tried. Okay.

(A panel of prospective jurors entered the courtroom.)

MR. BLOOM: Your Honor, may I address the Court, please?

As your Honor knows, we had some problems here in court before the luncheon break. I would just like to state that whatever does happen henceforth, my client -- I speak in this regard for the co-defendant -- has no intention in any way of injuring anyone, of doing any violence to anyone, that if indeed the Court directs the Marshals to do something one way or another with regard to him, or them, my client and the defendant Chesimard intend to totally acquiesce. There is no need for being dragged; there is no need for being beaten; there is no need for being handcuffed.

That is all I wish to say.

THE COURT: Thank you very much, and, as they say with all of us, actions speak louder than words.

Proceed with the filling of the jury.

MISS WILLIAMS: I have an application.

THE COURT: I am sorry. We are going to proceed with the drawing of the jury panel.

MISS WILLIAMS: I think the Court would be interested in my application.

THE COURT: Miss Williams, please. We are going to proceed with the drawing of the jury panel.

MISS WILLIAMS: Under the circumstances, the defendant Chesimard is not going to proceed with the jury trial because of the absolute refusal of the Court to grant her her basic constitutional rights. I think the Court would wish to be aware of that.

THE COURT: Miss Williams, we have spent enough time. Please. We are going to proceed with the drawing of the jury panel.

MISS WILLIAMS: I am advising the Court --

THE COURT: Mr. Matarese, will you draw the next juror.

MISS WILLIAMS: I am advising the Court that I intend to stand mute, that I consider this reversible error on the part of the Court and that my defendant will not participate in this handling of the trial.

THE CLERK: Juror Number --

DEFENDANT CHESIMARD: Just a minute. Why is it when

Maurice Stans and whatever that other dudels name was, were in this court, that the Judge found it necessary to treat them like they was an embassy of the White House, and here we are treated by grand executors?

THE COURT: Mrs. Chesimard, will you please be quiet? Mrs. Chesimard, I am directing you --

DEFENDANT CHESIMARD: Just tell me --

THE COURT: Mrs. Chesimard, I am directing you to be quiet. Mrs. Chesimard, I am directing you to be quiet. The alternative --

DEFENDANT CHESIMARD: You have brought me here --

THE COURT: The alternative of your not being quiet will be removal from the court.

Marshals, with the utmost gentelity, will you please escort her quietly.

DEFENDANT CHESIMARD: Wait a minute. I have something to say.

MISS WILLIAMS: She is not doing anything. There is no reason to put your hands on her.

DEFENDANT CHESIMARD: I can walk without you.

THE COURT: Just as gently as you can, remove her from the courtroom.

DEFENDANT CHESIMARD: There is no justice in this court, and there is no justice in America.

DEFENDANT HILTON: No, your Honor, I am not going to be silent when someone loses her constitutional rights.

THE COURT: Mr. Bloom, I had some representation from you that your client was not going to say anything --

MR. BLOOM: I did not say that. I said there would be no violent reactions to the actions of the marshals.

THE COURT: I suggest if there is any further conversation, Mr. Hilton will be asked to leave the courtroom, too.

Members of the prospective jury panel, I apologize for the inconvenience that may be caused by your walking in and out of here, but these steps are necessary for me to take, and I am going to ask all of the jurores -- can you clear the outside corridor, because we are not going to be too long in this, and there is no need for the jurors to go down to the first floor again.

I am going to ask in a moment thatall of the prospective jurors assemble out of the courtroom, out in the corridor, and I will have you back in a moment, but I want to be sure the corridor is clear, so if you will wait a moment until the marshals ascertain that fact --

MISS WILLIAMS: I would like to ask the Court what the Court intends to do with my client.

THE COURT: Miss Williams, please be seated.

MISS WILLIAMS: May I expect that the Court will respond to that question?

THE COURT: You will get an answer as soon as the jurors are assembled outside of the courtroom.

DEFENDANT HILTON: I have something to say.

THE COURT: No, Mr. Hilton, please.

DEFENDANT HILTON: I am going to say it. I feel this is the Court railroading us, that we are not ready to go to trial.

THE COURT: Mr. Hilton, will you please remain silent?

DEFENDANT HILTON: My attorney is trying to investigate --

THE COURT: Marshals, as gently as you possibly can -- do not exert any more force than is necessary --

DEFENDANT HILTON: No. I want to say --

THE COURT: -- will you please escort Mr. Hilton outside of the courtroom, as gently as you can.

If you will step out gently with them, they will not have to do anything -- if you want out gently you will not -- there will be no force exerted on you. All right.

DEFENDANT HILTON: This is all in cold blood.

THE COURT: Members of the prospective jury panel, will you please assemble outside, and I will have you back

very shortly.

(The panel of prospective jurors left the courtroom.)

THE COURT: All right. Are all the jurors outside?

All right. May we have the defendants returned to the courtroom, please?

(Defendant Hilton entered the courtroom.)

MISS WILLIAMS: Your Honor, with your permission, may I just step --

THE COURT: The defendant is not here yet.

MISS WILLIAMS: Your Honor --

THE COURT: No. Please wait.

MISS WILLIAMS: I just want to ask your permission to smoke a cigaret while they are waiting.

THE COURT: No.

MISS WILLIAMS: You are depriving me --

THE COURT: No. The Surgeon General has found that smoking is detrimental to your health.

MISS WILLIAMS: I get very nervous when I can't smoke.

(The defendant Chesimard entered the courtroom.)

THE COURT: Mr. Bloom, you have indicated before, and I wish you had done that before the jury came in, because I don't like to have anything said in the presence of the jury -- you said thirty seconds would save a lot of time.

Was there some particular matter that you wanted to bring up?

MR. BLOOM: Just what I said when the jury was present. Without violence, your Honor.

THE COURT: I wish you wouldn't make these statements in the presence of the jury.

MR. BLOOM: That is why I asked to make it -- it took ten seconds for me to say it.

MISS WILLIAMS: Your Honor, that is not a correct statement. I think the record should be clear that Mr. Bloom requested to make a statement before your Honor prior to the jury being brought here.

Your Honor, I think it would save a great deal of time --

THE COURT: Miss Williams, please --

MISS WILLIAMS: I mean, let's make the record correct, sir. That's what's important.

THE COURT: We have a very accurate transcript of what has been transpiring here.

MISS WILLIAMS: I hope so.

THE COURT: Mrs. Chesimard, I must warn you again, as I did before, of the drastic steps that I may be bound to take in order to insure that we proceed with this trial, and if you are going to stand up in court and make statements and refuse to abide by my orders to be seated and remain

quiet, I have two alternatives: one is to bind and gag you and shackle you to your chair, and the other, if I find that that is not the appropriate remedy, is to have you absent from this courtroom throughout this entire trial.

DEFENDANT CHESIMARD. To be railroaded is the most drastic step you could have taken. That's what happened, and that's what I am trying to stop. This is my life, and you only have one of those, and I say what's going on here is wrong, and when I see wrong I have to talk out against it, and what I see here is wrong.

It's been wrong because we aren't even prepared for a trial. How are we going to go on with the trial?

THE COURT: Mrs. Chesimard, you have been indicted by a grand jury. You have pleaded to that indictment, and all that remains is the trial of that indictment.

With all the powers that I possess, I intend to give you, from my end of it, the fairest trial anyone can possibly get, not only to you but to everybody who appears before me, and I am trying to find out whether you are willing to be present at your trial by abiding by the rules of this court or whether you are going to compel me to take some steps that I very much hesitate to take.

I think that you can render you greatest assistance to your counsel by being present in this court and being able

to freely consult with your counsel, but you are violating the orders of the Court in making statements and in rising when you are told not to and in not obeying the orders of the Court, and that may compel this Court to take those steps which the Court feels compelled to take.

Now, I am going to give you a few more occasions to see whether or not we can proceed with the selection of this jury and proceed with this trial with you behaving properly.

All right. Mr. Hilton --

DEFENDANT HILTON: What is that?

THE COURT: Mr. Hilton, I urge you not to make any outbursts. I urge you when I direct you to be silent and to be seated that you do so. You are represented by competent counsel in Mr. Bloom, and I am only going to allow counsel to address the Court.

All right. Have the jury come in.

MR. BLOOM: Just so the record is complete, both Mr. Hilton and Mrs. Chesimard remained seated while they spoke earlier.

DEFENDANT CHESIMARD: Judge, you have constantly said that it is my violating the laws of decorum or whatever of this courtroom. I am not violating any of the rules of law.

You are violating the laws of humanity, the rules of justice. That's what you are violating. How can you ask me to be silent when I see that I am being lynched?

THE COURT: Mrs. Chesimard --

DEFENDANT CHESIMARD: How can you ask me to remain silent when I see that you have made deals, when I see that you are corrupt, that you are bigoted, and I see that you are bought and paid for? How can you ask me to be silent?

THE COURT: Miss Williams, I urge you to suggest to your client that she remain silent?

MISS WILLIAMS: Your Honor, may I have a consultation?

DEFENDANT CHESIMARD: My attorney has advised me to be quiet. She has said that I should make no further statements, but I cannot accept that. I just simply cannot accept it. I cannot accept it because I object to the very being here in the first place, to being here,because I am on trial in New Jersey.

THE COURT: Mrs. Chesimard --

DEFENDANT CHESIMARD: We were in the midst of pretrial proceedings that were taking place in New Jersey. This is an attempt by this Court -- I have no convictions. This is an attempt to railroad me.

THE COURT: Mrs. Chesimard, I direct you to remain

silent.

DEFENDANT CHESIMARD: You can get these dudes to do everything you want them to do. It's not right.

THE COURT: Mrs. Chesimard, I am going to remove you from this court, and you will not return to this court.

DEFENDANT CHESIMARD: You might as well let me stay. You aren't saying anything.

THE COURT: Will you be silent?

DEFENDANT CHESIMARD: No. I am not going to be silent when I see my life before me, see lynching. I am not going to be silent. It would be --

THE COURT: When you advise me through your attorney that you are willing to behave yourself -- Marshals, as gently as possible, remove her from the courtroom.

DEFENDANT HILTON: Is that what you call a fair trial? We are trying to investigate this, and the only possibility that we have --

THE COURT: Mr. Hilton, I am going to have you removed from this courtroom. When you can advise me, through your attorney or otherwise, that you are willing to proceed in a decorous manner, you will be permitted to return to this courtroom.

In as gentle a manner as possible, marshals, will you escort Mr. Hilton from this courtroom.

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DEFENDANT HILTON: And they pull arms on us. You saw what was going on. There's no way that we can have a fair trial here.

THE COURT: Mr. Hilton, when you advise me that you are going to behave, you can return.

Proceed with the drawing of the jury.

THE CLERK: Juror Number 5 --

MISS WILLIAMS: Your Honor, may I have an opportunity to consult with counsel?

THE COURT: I beg your pardon?

MISS WILLIAMS: May I have an opportunity to consult with co-counsel?

THE COURT: You may be seated there.

MISS WILLIAMS: Prior to your continuation of jury selection.

THE COURT: I am going to proceed with the selection of the jury, Miss Williams.

Will you call the next juror.

THE CLERK: Alma Mitchell, Juror Number 5.

Juror Number 6 is Dorothy D. Stacey.

Juror Number 7 is Rudolph Jeffrey. Please take the seat behind Juror Number 1, sir.

Juror Number 8 is Sarah Dolin.

Juror Number 9 is Susan L. Sankel.

Juror Number 10 is Esther Farron.

Juror Number 11 is Richard Russell.

Juror Number 12 is Olive C. Farmer.

MR. BLOOM: Excuse me. May I have leave to be excused from the courtroom, since I cannot participate without the assistance of my client.

THE COURT: I am going to have the defendants brought back again. We have twelve prospective jurors in the box. I will give them one more opportunity to see if they will behave themselves.

All right. Will you return the defendants to the courtroom.

(The defendants entered the courtroom.)

THE COURT: Members of the jury, we are here to select a jury of twelve jurors and four alternates in this particular case, and I will be telling you a few things about it in a few moments.

I am going to ask -- and I hope we have the public address system connected here; I don't like to talk in a loud voice; it is not the way that I am usually accustomed to talk, in a loud voice. Can you in the back of the courtroom hear me all right? If not, would you raise your hand?

All right. There is one lady in the back who raised her hand. The rest of you can hear me all right, I guess. I

will try and talk a little louder. It is important that each and every one of you pay attention to what I have to say here.

DEFENDANT CHESIMARD: Judge, can I say --

THE COURT: Eventually, I will be addressing some specific questions to those twelve jurors who sit in the box now, but as we progress it is entirely possible that some of those jurors that are presently there will be excused, and those in the back of the courtroom --

DEFENDANT CHESIMARD: He didn't want me to speak.

THE COURT: In that case, I am merely going to ask you --

DEFENDANT CHESIMARD: Judge, I am on trial somewhere else. I can't be tried here. We are not prepared for this trial. This is the only reason my lawyers have requested time, and time again I am not prepared.

THE COURT: Mrs. Chesimard --

DEFENDANT CHESIMARD: We are on trial in New Jersey. We can't go through with this trial. You have refused to make -- a two-year-old baby -- you call yourself a judge, but a two-year-old baby can understand that if someone is not prepared to go to trial --

THE COURT: Mrs. Chesimard, I direct you --

DEFENDANT CHESIMARD: You say we must sit here and

be quiet.

THE COURT: Mrs. Chesimard, I direct you again to remain silent.

DEFENDANT CHESIMARD: No. I am not going to be quiet.

THE COURT: Miss Williams, I suggest that you have a moment's private conversation --

DEFENDANT CHESIMARD: What kind of conversation can she have with me? Can she tell me that we are prepared?

THE COURT: The alternatives that I have suggested will have to be taken.

DEFENDANT CHESIMARD: Can she tell me there will be justice? All she can tell me is that she is not prepared. She is not even familiar with anything of this case. All she knows is an indictment. How is a lawyer going to answer an indictment? You answer me that. You call yourself an intelligent man, or this is what you have the jury believe, that you are intelligent, yet you act so unintelligent as to force a lawyer and client to go on trial when they are not prepared. How can you justify this? How can you say this is fair?

THE COURT: Miss Williams, I am about to take some steps -- Miss Williams, I am about to take some steps about which I have informed you before.

DEFENDANT CHESIMARD: No, no. You have to start with the basics.

THE COURT: Miss Williams, will you advise your client to remain quiet?

DEFENDANT CHESIMARD: She has already gone through this, and she don't have to go through this again. I only have one life. No only has one life.

THE COURT: Miss Williams, do you request she be gagged or removed from the court?

DEFENDANT CHESIMARD: Don't tell me about being gagged. I am already gagged. I am already lynched. If you are an intelligent man --

THE COURT: Miss Williams, do you request to have your client in court, silenced in court, or outside? We have reached the stage where I am satisfied that we cannot continue with her being present in court.

MISS WILLIAMS: Your Honor, you asked me to stand so I can address you.

THE COURT: Yes; and will you answer my question directly?

MISS WILLIAMS: I assume the Court wants a response from me.

DEFENDANT CHESIMARD: Are you unprepared? Are you unprepared?

THE COURT: I want to know what your choice is. You have two choices --

DEFENDANT CHESIMARD: We are not prepared to go to trial.

MISS WILLIAMS: May I just respond?

DEFENDANT CHESIMARD: Can you represent me fairly?

MISS WILLIAMS: I am requesting an adjournment.

THE COURT: I have passed upon that. Miss Williams, I am asking you now: you have one of two choices. Which is your preference of those two choices?

MISS WILLIAMS: I have not heard what the choices are.

THE COURT: The choice is to have your client present here in court and gagged or have her removed from the courtroom.

DEFENDANT CHESIMARD: That's not a choice to make.

MISS WILLIAMS: Number one, I cannot make that choice.

DEFENDANT CHESIMARD: She wants to defend me, but you will not allow her. She hasn't the time. You have to dismiss the jury so that we can have --

THE COURT: I am satisfied that we have reached the stage that this defendant --

DEFENDANT CHESIMARD: I am not going to sit in this

courtroom and act like everything is cool. One person only has one life, and if you don't stick up for that life with your brothers and sisters, ain't nothing going ever work right for you.

THE COURT: Marshals, as gently as you can, would you just take her --

DEFENDANT CHESIMARD: She is not prepared.

DEFENDANT HILTON: Why don't you remove her from the court? Because you are afraid the people will see what's going on?

DEFENDANT CHESIMARD: They have repeatedly asked us to stay so we can go on trial. You were paid and bought, and you are an agent of them. You have no interest in justice. You have no interest in anything except for a railroad.

THE COURT: Miss Williams --

DEFENDANT HILTON: We have been denied the opportunity --

THE COURT: Mr. Hilton --

DEFENDANT HILTON: No. I am not going to shut up, because you are taking my life, too.

THE COURT: Will you just remove Mr. Hilton?

DEFENDANT HILTON: Mr. Avon White was a police officer for two years.

THE MARSHAL: On your feet.

DEFENDANT HILTON: And we had to chase upstate New York, and I am trying to investigate this. But these people are talking about chaining and gagging, so there's no way I can let you know that there's no way to have a fair trial.

THE COURT: Miss Williams, I am satisfied, and, Mr. Bloom, I am satisfied from what has transpired here today there is no way we can continue with the trial of this case without the defendants being silences while we proceed with these proceedings. You have a choice, and, Miss Williams, you are the attorney for the first-named defendant.

MISS WILLIAMS: Her name is Joanne Chesimard.

THE COURT: And she is the first-named defendant, and I am asking you: you have a choice. Whic of those two do you select?

MISS WILLIAMS: Your Honor, I refuse to exercise any choice over the life, the liberty or the judicial process that specifically affects --

THE COURT: You are an officer of this court. You are an officer of this court.

MISS WILLIAMS: And I expect to be treated like one, and I expect to be heard. I expect the Court to listen to a so-called officer of the court.

THE COURT: Miss Williams, I want tn answer as to

your choice.

MISS WILLIAMS: I am attempting to give you --

THE COURT: It is going to be yes as to one or yes as to two.

MISS WILLIAMS: One is what?

THE COURT: Do you want your client present in court here and silences with a gag, which is the only way we can do it, or do you wish to have her remain outside this court while we proceed until such time as she has indicated to you and to me that she can come into this courtroom and conduct herself so that she doesn't interrupt these proceedings that we are going to have today?

Now, which is your choice?

MISS WILLIAMS: Your Honor --

THE COURT: Please, Miss Williams, it is a very direct question, and I want a direct answer.

MISS WILLIAMS: You know, like I think -- Just a moment, your Honor.

THE COURT: No. Just, please -- Now, don't --

MISS WILLIAMS: Then why ask me anything if your Honor doesn't expect an answer?

THE COURT: You have no choice?

MISS WILLIAMS: What answer do you want from me? I am going to give you the answer that I think is fair in

relation to my clients, and if your Honor is going to prevent me from doing that, then why ask me a question? I simply don't understand.

THE COURT: I direct that the defendant Chesimard be taken out of the presence of this Court until such time as she indicates, either through you or to the Court, that she will comport herself in the manner in which she should.

MISS WILLIAMS: And I am advising the Court that I will not participate under this gag rule decision of this Court without the presence of the defendant, who has every right to be not only at her own trial --

THE COURT: All you have to do is -- Your objection to the Court's ruling is noted.

Mr. Bloom?

MR. BLOOM: Yes, your Honor.

THE COURT: I put to you the same choice, and I want an answer directly.

MR. BLOOM: I choose neither, your Honor. I ask for an adjournment of the trial so that we can prepare. That is what I ask for.

THE COURT: YOu wish the Court to make its own decision?

MR. BLOOM: I have no choice, your Honor. You are the person who makes the decisions here.

THE COURT: Under the circumstances, I will direct that the defendant Hilton be kept in a safe place outside of the court while we proceed here, and I direct both counsel to inform their clients at the closing of the proceedings here today or at the next recess that as soon as they are prepared to inform me that they will comport themselves in a dignified manner in this courtroom and will not obstruct our proceedings, that they will be allowed to return to court.

Very well.

MR. BLOOM: I renew my application to be excused from the courtroom, since I cannot effectively --

THE COURT: No. Your application is denied.

All right. Members of the jury --

MISS WILLIAMS: I want my application to be excluded from this court and from this case --

THE COURT: Your application is denied.

MISS WILLIAMS: I love the way your Honor anticipates what I might be trying to say.

I think that it's your Honor's responsibility to listen and to respond to counsel's statements. I don't think that I am being abusive, disruptive or obstreperous et cetera.

THE COURT: Miss Williams --

MISS WILLIAMS: I am simply trying to make a state-

ment to your Honor.

THE COURT: Miss Williams, I will have no statements from counsel.

MISS WILLIAMS: Your Honor, if I am not permitted to make any statements, will you please explain to me why my presence before your Honor is necessary?

THE COURT: You make objections to my rulings, and I will --

MISS WILLIAMS: Your Honor, I am not --

THE COURT: Be seated.

MISS WILLIAMS: Your Honor, I am not going to be seated or continue in this courtroom. Your Honor will not permit me to make a statement, and I think that this is the foulest display of injustice that I have ever had in my experience, and I have had many.

THE COURT: I am directing you to be seated.

MISS WILLIAMS: And to be silent?

THE COURT: Not to be silent.

MISS WILLIAMS: Will you explain to me in what way I can participate?

THE COURT: In the event you have objections to the Court's ruling, I direct you to say that you object to the Court's ruling.

MISS WILLIAMS: Period?

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THE COURT: Yes. I want no statements as to the reasons for your objection.

MISS WILLIAMS: I take exception to the Court's ruling, and I will not sit here, and I will not submit to that direction of the Court.

THE COURT: That is what I am directing you.

Members of the jury, as I have indicated to you, I want you all to listen to the questions that I have to put to you so that in the event that one or more of you is excused and somebody in the rear of the courtroom takes the place of one of the jurors here, that we will not have to go through the procedure of re-asking you individually each of these questions.

Now, this is a case entitled United States of America against Joanne Chesimard, Freddie Hilton --

Miss Williams, if you leave this courtroom, I must indicate to you that you subject yourself to being cited for contempt of this Court.

MISS WILLIAMS: I am aware of that, sir. I have also explained to the Court that if the Court expects me to participate in this trial but will in fact refuse to permit me to make a statement, that my presence in fact is unnecessary.

THE COURT: Miss Williams, if you are --

MISS WILLIAMS: I am sure you can continue without my presence --

THE COURT: Miss Williams, if you are no longer going to represent this defendant --

MISS WILLIAMS: I am representing the defendant, and I expect to take an immediate appeal from your Honor's decision.

THE COURT: Miss Williams, if you are no longer going to represent this defendant, you make it known now. If you are going to continue to represent this defendant, I direct that you remain in this courtroom and that you seat yourself at counsel table.

MISS WILLIAMS: And I am advising your Honor that since your Honor will permit me no opportunity to make any statement, that it is impossible for me to participate.

THE COURT: You will have adequate opportunity -- in the absence of the jury -- to make any statement that you wish. In the presence of the members of the jury, when there is an objection to be made, all I want to hear is the fact that you have an objection.

MISS WILLIAMS: And that is all that I am permitted to say?

THE COURT: That is all that you are permitted to say.

MISS WILLIAMS: Then I will not participate.

THE COURT: I am sorry. If you cannot learn to participate --

MISS WILLIAMS: Well, the U. S. Marshals are available.

THE COURT: I direct you that if you intend to leave --

MISS WILLIAMS: I intend to leave, so you can do what you intend to do right now.

THE COURT: I intend to take the necessary proceedings in connection with your contumaceious conduct to this Court.

(Miss Williams left the courtroom.)

THE COURT: Mr. Truebner, I intend to appoint counsel to represent the defendant. I am sure that counsel is going to require a few days to prepare himself to defend.

MR. TRUEBNER: Very well, your Honor.

THE COURT: The case stands on trial, Mr. Bloom. You are on trial in this case before this Court. I would suggest -- I would suggest for the moment that the jurors return to the Central Jury Room and await the further directions of this Court. I will consult with the jury clerk and ascertain whether or not we may still use this panel on this case if we are to proceed within the next day or two.

So I guess all you can do now is to go back to the Central Jury Room.

I want to suggest this to you jurors: that it is entirely possible that you may be further called for service on this case. I am not certain of that. I want to suggest to you that there may or there may not be publicity with respect to what has transpired here. The title of this case is United States of American against Joanne Chesimard, Freddie Hilton, also known as Jamal, and Avon White, also known as George.

It is most important that in any trial the evidence that a jury considers with respect to the trial be the evidence that they hear in the courtroom. Jurors are the ones who see thewitnesses, who actually hear what is said and observe the demeanor of the witnesses, and it is only upon the evidence that is adduced in the courtroom that a jury should pass upon the facts or the issues that are submitted to them by the Judge under the law that the Judge gives.

I am going to ask you to make every effort in your power not to read at all anything about this case. I am going to ask you, in the event that there are any radio or television reports, that you immediately dissociate yourself from listening to any such reports. It is a very difficult thing for you to do, but you as jurors, when you came here,

took an oath, an oath that you would well and truly answer the questions put to you bearing upon your qualification to sit as jurors in this case, and I am aware of the practical difficulties that are involved in what I am directing you to do.

Don't discuss the case among yourselves or with anyone else. You may well sit as a juror, or some of you, twelve and four alternates. They may sit as jurors in this particular case, and, as I said, it is going to have to be determined by what you hear and see in the courtroom and not by what you may read in the newspapers or hear about on the radio or television or what the members of your family or the friends whom you associate with, who have seen any newspaper articles or heard any of the media pronouncements relating to it, and, in fact, if we proceed with the selection of you as jurors, I will ask you, in the event that you sit in one of these seats here, whether you have heard or read anything about it.

So make your utmost effort to avoid it. Don't listen to it. As soon as we can make a determination as to what we are going to do, as to whether you are going to proceed as prospective jurors in this case or be discharged from service as jurors in this case, I will let the Jury Commissioner know.

In the meantime, I think the best thing is for all

of you to return to the Central Jury room.

(The panel of prospective jurors left the courtroom.)

THE COURT: Mr. Bloom, we haven't finished our session yet. It's all right to take the defendant downstairs. We don't need him any more this afternoon.

MR. TRUEBNER: Your Honor, the Government has some witnesses standing by. I take it it will be all right to release them. They won't be testifying today?

THE COURT: No. You will not need them. They won't be testifying today.

Mr. Bloom, this case is still on trial.

MR. BLOOM: I understand, your Honor.

THE COURT: I intend to appoint counsel, and I am going to do it this afternoon and find out how promptly counsel can acquaint himself with the facts of this case, and as soon as he can do that, we will proceed with the trial.

MR. BLOOM: Your Honor, all I can say is, I have made various applications as to the scheduling of the trial, and at no time was I consulted. I would ask your Honor to consult me again, because of my own schedule as an attorney and my own personal schedule.

That is all I can request, your Honor. I cannot direct your Honor to do anything. I can only make requests, and I do so request, and just so your Honor knows, I have four

cases in the State Court, which should take me less than two hours to dispose of. I am supposed to have a misdemeanor trial, which will take a day and a half to two days, in Queens County.

THE COURT: Let me ask you this. Where are you supposed to be tomorrow morning?

MR. BLOOM: 100 Centre Street and 111 Centre Street.

THE COURT: If you will do this: you give us the name of the case that you are involved in and the judges you will be before tomorrow morning. I will permit you to go over there with the understanding that if we proceed and they need you here, you will come right over.

MR. BLOOM: Well, may I make what I think is a practical suggestion? If you will hear me, I think you will agree with me.

They start at nine-thirty there, your Honor. I have four cases, that should not take me more than an hour, at most an hour and a quarter, to adjourn them all. I will inform them that I am on trial, and I will be here at ten-thirty or a quarter to eleven, if that is all right with your Honor.

THE COURT: That's all right. But you also tell me where we can reach you. If you will give Mr. Matarese, my clerk, tell him where we might call on you --

MR. BLOOM: I will do that, and I will also inform your Honor, that I have been directed by Judge Motley of this court to be before her at Room 705 tomorrow. That matter should not take more than fifteen minutes.

THE COURT: You shouldn't have any problem making that.

MR. BLOOM: I will inform Mr. Matarese.

THE COURT: And if you will be here as soon as you finish in the State Court --

Anything else, Mr. Truebner?

MR. TRUEBNER: Just two matters, your Honor. I think the record here should reflect that Miss Williams, counsel for the defendant Chesimard, summarily left the courtroom, in direct defiance of the Court's direction to remain. She did it prior to the time that the jury panel was excused, a moment ago.

Secondly, with respect to the appointing of new counsel, the Government is, of course, prepared to meet with whoever your Honor may appoint and supply informally all particulars relating to this offense, information pertinent to the defense of Miss Chesimard, and perhaps even a transcript of the prior trial, so that we don't believe it will be necessary for Miss Chesimard's new lawyer to file a formal set of motions. We are prepared to sit down with him and really give

complete and total discovery.

THE COURT: You had better ask for an immediate transcript, if possible, of at least the motions that were made this morning. I don't think there is anything further when we start selecting this jury that would be pertinent to counsel, but he might want to be acquainted with the motions that were made this morning. I think you ought to do that, if you can, as soon as you can do it.

(To the reporter:) I know your schedule up there is impossible, but do the best you can.

I intend to get on the phone immediately. There are a number of competent, capable attorneys that we have appointed in the past for defendants, and I intend to canvass the ones who have appeared before me and whom I have seen, who have shown their particular superior degree of competence, and see about their availability and their willingness to undertake the representation of Mrs. Chesimard in this case.

MR. TRUEBNER: Your Honor, one last housekeeping matter. The marshal has asked whether or not we will need both defendants tomorrow.

THE COURT: I would say no, with the caveat that if we need them in a hurry, why, somebody will inform them, but don't make any plans to have them here, and if we have to get

them here in a hurry, I know that you will do what you can.

(Adjourned to December 5, 1973.)

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
versus	:	73 Crim 572
JOANNE CHESIMARD and FREDDIE HILTON a/k/a JAMAL,	:	
Defendants.	:	

New York, N. Y.

December 5, 1973 - 2:00 p.m.

Before

HON. LEE P. GAGLIARDI,

District Judge.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the Southern District of New York
PETER L. TRUEBNER, Esq.,
Assistant United States Attorney

MS. EVELYN WILLIAMS
Attorney for Defendant Chesimard

ROBERT BLOOM, Esq.,
Attorney for Defendant Hilton

(In the courtroom.)

THE COURT: Has the public been admitted?

THE MARSHALS: Yes.

THE COURT: Miss Williams?

MS. WILLIAMS: I cannot hear anything.

May I request if a statement be made to defense counsel, that it be made clearer.

THE COURT: If you are going to address the Court I suggest that you stand and address the Court in a proper manner.

MS. WILLIAMS: I apologize to the Court.

THE COURT: Ms. Williams, are you willing to continue to represent the Defendant Chesimard in this case?

MS. WILLIAMS: Your Honor, I have at no time indicated that I am unwilling to represent the Defendant Chesimard. I have at no time indicated to your Honor that I am not her attorney until she decides that she wants to discharge me.

Now, she has not so advised me. Therefore, I assume I continue to represent her.

My reaction yesterday was not to Joanne Chesimard's statement before this Court which I think I addressed myself to, but it was in relation to your Honor's statement, that I had no opportunity at any time to make any statements before

this Court except a yes or no statement, and I advise the Court that if those limitations were put upon me it would, and continues to be, an impossibility for me to represent Joanne Chesimard or Joe Blow. It doesn't matter. If I cannot address myself to the Court, and if the Court is telling me that I cannot make an objection and make no legitimate legal arguments around the objection, and that that is my status in this case, then the Court does not need any attorney defending anybody, and I think that is the point, and I think that should be made very clear.

That was the point at which I left this Court.

THE COURT: First of all, your view of the record, as I see it, at the end of yesterday you made an application to withdraw as counsel in this case, and I deny that application. And I am asking you now whether you are willing to continue to represent the Defendant Chesimard in the trial of this case.

MS. WILLIAMS: I dispute your Honor's statement --

THE COURT: Please just answer the question.

MS. WILLIAMS: Your Honor, may I finish?

THE COURT: It calls for a simple answer.

MS. WILLIAMS: I dispute your Honor's statement.

I have requested the minutes in this case. I intend to take those minutes of the proceedings of yesterday.

I have advised your Honor that I am the attorney for Joanne Chesimard, and I will continue to be her attorney until she dismisses me.

THE COURT: Very well. That means that you wish to continue to represent her in this case?

MS. WILLIAMS: I would assume so, sir.

THE COURT: Very well, all right.

In the interest of orderly procedure in this case, I have contacted Mr. Howard Jacobs --

MS. WILLIAMS: Who is he?

THE COURT: Mr. Howard Jacobs is an attorney on the panel of attorneys selected by the Judges of this Court to represent defendants in certain cases, and I am assigning him here to sit in on this case --

MS. WILLIAMS: To sit in on this case for what purpose?

THE COURT: -- if he is willing to accept the assignment --

MS. WILLIAMS: To sit in for what purpose?

THE COURT: -- to be familiar with what transpires here, and in the event that there may be a need for it, to permit Mr. Jacobs to continue the trial or the defense of this case.

MS. WILLIAMS: I am advising the Court at this

point, when I called my telephone answering service at 11:30 I was at that time before the Eastern District Court of the United States District Court in the State of New York. I called from that building from Judge Mishler's general chambers. At that time I learned that your Honor had directed me to appear before this Court at 2 o'clock.

I advised your clerk -- you were busy, and I couldn't reach you because I wanted to talk to you, and I specifically requested that you be made available telephonically for a conversation with me.

After approximately 20 minutes your clerk tells me that you were not available.

I advised the clerk where I was and why I was there, because it was my assumption that the Defendant Chesimard was still under my responsibility; that she was under Federal detention, and I had many cases to discuss with her, as your Honor knows -- some of them are Federal and some of them are State -- and I simply responded to the phone call that I got from my telephone answering service at 11:30 this morning, which can be verified.

THE COURT: Very well.

MS. WILLIAMS: Now, your Honor, I have had no opportunity to consult with my client who I thought, in fact,

was on Reiker's Island in view of your Honor's statement yesterday.

I would like an opportunity to consult with my client at this time before this trial proceeds any further.

I am making this application to your Honor in the interest of justice, in the interests of temperance, in the interest of all concerned.

I would hope that your Honor would grant at least that small application.

THE COURT: Well, we have a jury panel standing by, and since you are willing to continue to represent Mrs. Chesimard --

MS. WILLIAMS: I have never stated that I would not represent her.

THE COURT: Very well, then we will proceed with this trial.

Mr. Jacobs?

MR. JACOBS: Yes, your Honor.

THE COURT: Would you for the record state your name and your business address?

MR. JACOBS: Howard L. Jacobs, 401 Broadway, New York, New York 10013.

THE COURT: I asked and contacted you last night because I was not aware of what would happen here this

morning or whether Ms. Williams would continue to represent the Defendant Chesimard, and I asked if you would be willing to undertake an assignment to do whatever may be necessary to protect the interest of Mrs. Chesimard in the event that there was some problem with respect to counsel.

MR. JACOBS: Your Honor --

THE COURT: I asked you to familiarize yourself with whatever matter the United States Attorney would make available to you.

Have you done so?

MR. JACOBS: Your Honor, I spent about two or three hours last night going over the material and discussing cases with Mr. Truebner. I was furnished with some of the transcripts of a prior trial involving this case. I have read about 100 pages of that transcript. I am continuing to read it.

THE COURT: All right.

2/ If you need any further time in the event you should have any interruption of representation of this case in the selection or in the continuation of the selection of the jury, would you be prepared on a stand-by basis, as we are presently situated, to commence now, and in the event you need more time --

MR. JACOBS: Your Honor --

THE COURT: What is your request, sir?

MR. JACOBS: I have no request.

THE COURT: Not a request. I mean --

MR. JACOBS: I have no request now, your Honor, but I was told if I was called upon to represent the defendant before next Monday, meaning if there was a disruption between now and next Monday, I would request an adjournment so that I could fully familiarize myself with everything so that I could properly represent her.

What I am saying to your Honor is that under the present circumstances where she is represented by counsel I have no request that the trial be adjourned.

MS. WILLIAMS: If the Court pleases, I don't believe that it is within the jurisdictional confines of a Court-appointed attorney, subject to certain conditions, obligations, to make a statement that he will be ready depending on the Court's decision.

I have advised the Court, and the Court is well-aware of the fact that I not only represent Joanne Chesimard in this State, but in the State of New Jersey, in the Eastern District of the State of New York and also on two indictments in Bronx County and in Brooklyn -- I am sorry, in Brooklyn County and Kings

County, and I am, in fact, not stating that I will not represent her.

All I am requesting, urging, pleading and imploring to the Court, that the Court give me an opportunity to represent this defendant to all of the so-called alleged interests of justice.

If the Court is going to have a monitor standing by to takeover -- and I will call him a so-called alternate juror, which is what he, in fact, will be -- then I say I object to that and I am not going to respond to any of the statements that he makes --

THE COURT: Very well.

MS WILLIAMS: -- but it is very interesting to me -- if the Court will permit me to finish -- that the Court is prepared to give this attorney that the Court has appointed an opportunity to prepare himself for this case, but the Court will not give me an opportunity to prepare myself with the case even though I have fully advised the Court of all of the reasons for the need for an adjournment.

And I would like that to be on the record.

THE COURT: All right, it is on the record, and I am satisfied on the basis of my familiarity with the case and the length of time that you have been representing

this defendant in here, that you have had more than an adequate time to prepare yourself to defend this case.

Mr. Jacobs, under the applicable provisions of law I appoint you as counsel in this case.

MS. WILLIAMS: I reject that appointment. I reject that appointment on behalf of the Defendant, and I do not even have to talk to the defendant, nor does the defendant have to disrupt the Court proceedings to make that statement.

I tell the Court now that this defendant will not have any attorney to represent her except me.

THE COURT: Very well.

Now, Ms. Williams, so that there will be no misunderstanding, I want to inform you of the rules under which I conduct my Court --

MS. WILLIAMS: Yes, I am familiar with the rules.

THE COURT: You are familiar with them?

Well, just so there will be no misunderstanding about that --

MS. WILLIAMS: The only problem is the problem of justice, sir.

THE COURT: -- I recognize the absolute right and the duty of a counsel to make objections on points of law. I am aware of that. On the other hand, unless I

ask for a specific statement as to --

MS. WILLIAMS: -- I am sorry --

THE COURT: Unless I ask for a specific statement on the basis of an objection --

MS. WILLIAMS: An objection to what?

THE COURT: To any ruling I may make, unless I ask from counsel for a specific explanation of the legal basis upon which such objection is made, I do not expect to have any statements from counsel.

You may object, and that is taken in the way of every other lawyer taking an objection -- "I object," and I will rule, and then I expect no argument about my ruling and no statements with it.

I told you that the next time we have a recess following any objections, objections may be made in the absense of the jury and you may, as you deem appropriate, make any statement that you want with respect to the reasons for your objections, and if I find that on the basis of that that my ruling was in error, I will correct my ruling and give you the opportunity, if necessary, to call a witness back or to go over the area we have covered.

But in my courtroom -- and I have always conducted it this way, and that is what I insist on --

objections be made without argument, and the opportunity is given to counsel in the absense of the jury to proceed with any legal argument they wish to advance not in the presence of the jury. I do not want the jurors to hear legal arguments or arguments on legal points, and that is the direction of this court to all counsel in this case.

MS. WILLIAMS: Yes, sir, I understand that.

May I make a statement?

THE COURT: Now Ms. Williams --

MS. WILLIAMS: Well, it is up to you, sir.

I have an application to make a statement.

May I make a statement?

THE COURT: If you have an objection to the way I am going to conduct the trial you may make your application on the record and then we will proceed.

MS. WILLIAMS: Your Honor, I assume this is all on the record.

THE COURT: There is no doubt about it.

MS. WILLIAMS: If it is not on the record, then I would assume you would immediately proceed over again.

Now, your Honor, I want to make one statement. I have no objection to the Court's ruling. I think I indicated that yesterday.

I think, however, I indicated to the Court, and I want this perfectly clear, that if the Court is going to deny me, as counsel for the Defendant Joanne Chesimard, the opportunity to not only object but to at least cite my reasons for objection, that that was the reason that I stated that I, in fact, had no purpose in this trial whatsoever.

I want the Court to take cognizance of the reason that I left this Court, and I do not want any misinterpretation of why I left this Court. I did not leave this Court because I am not Joanne Chesimard's attorney. I will be her attorney until she tells me she wants somebody else, and that will be her prerogative --

THE COURT: I am just indicating to you that I do not want any statements in the presence of the jury.

Very well.

MS. WILLIAMS: Your Honor, the statements were not made in the presence of the jury. I can assure your Honor I have had many jury trials, and I attempt whenever possible to avoid that because I understand the prejudicial impact of making those kinds of statements --

THE COURT: All right.

MS. WILLIAMS: -- but if your Honor is not going to give me an opportunity to make a statement before you prior

to the panel being chosen, then you are forcing me to make a statement in the presence of the panel, and that is your Honor's responsibility, and you have to accept whatever comes from that.

THE COURT: All right, we will clear the courtroom now except for counsel and the defendants.

3/ MR. BLOOM: I am just wondering, your Honor, is my client going to be produced?

THE COURT: Yes, your client will be produced as soon as the courtroom is cleared.

MR. BLOOM: I just want to inform the Court that the matter that I was before Judge Motley at 12:45 has been set down today for 3:30.

THE COURT: 3:30?

MR. BLOOM: Yes.

THE COURT: We will do the best we can.

MS. WILLIAMS: Your Honor, I wanted to clarify on behalf of my defendant's state of mind that I am her attorney, she is accepting no other attorney, alternate juror attorney, et cetera.

THE COURT: I understand that.

MS. WILLIAMS: And I would like to know what the Court's position is on that.

THE COURT: You have made your objection.

MS. WILLIAMS: I beg your pardon?

THE COURT: You have made your objection and it is noted on the record.

MS. WILLIAMS: If the Court's position is that Mr. Jacobs --

THE COURT: Mr. Jacobs is here and you will find him an extremely competent attorney.

MS. WILLIAMS: I am not doubting his competency; I am just doubting, your Honor, his desirability as the attorney for the Defendant Chesimard.

THE COURT: Very well.

MS. WILLIAMS: And I am putting thisCourt on notice that she will accept no other attorney except me.

THE COURT: I understand. Very well.

MS. WILLIAMS: Now may I respectfully request that I have an opportunity to speak to my defendant, my client, prior to any further proceedings in this court.

THE COURT: You are both there. You can talk.

MS. WILLIAMS: I know we are both here, sir.

THE COURT: You may sit down and talk.

MS. WILLIAMS: The Court has indicated that you are prepared to bring in the jury.

THE COURT: That is correct.

MS. WILLIAMS: Therefore I am specifically

requesting, sir, that I be given 10 minutes or 20 minutes to speak to my client before the jury is brought in.

THE COURT: Now, Ms. Williams, you have had --

MS. WILLIAMS: You will not permit that in view of your rulings yesterday and my statements yesterday, you will not give me an opportunity to speak to my client?

THE COURT: You can sit there, and it is going to be about 10 minutes before the jurors get here.

Please, you can sit there and you can talk to your client.

MS. WILLIAMS: You know, the electronic devices are everywhere. I would like to have an opportunity to speak to her in privacy so that she can express to me what her feelings are.

THE COURT: You may sit there and talk with her in private and I will --

MS. WILLIAMS: You will not permit me --

THE COURT: You can sit there and talk to her.

MS. WILLIAMS: But you will not permit me to talk to her in privacy?

THE COURT: And I direct everybody to remain in the courtroom.

MS. WILLIAMS: Your Honor's objections is excepted to.

THE COURT: Ms. Williams, I am trying to see if we can arrange, where adequate security can be arranged for you and Mrs. Chesimard to talk for 10 minutes.

MS. WILLIAMS: Thank you very much, your Honor. I appreciate that.

THE COURT: Very well.

(Recess.)

THE COURT: I neglected to inform you that the jurors that we have now -- I am informed by the jury clerk that none of them was on yesterday's panel; it is an entirely new panel.

MR. BLOOM: Just so I can understand, your Honor, has a mistrial been declared?

THE COURT: No mistrial has been declared. We have another panel of jurors.

MS. WILLIAMS: Your Honor, normally, in my limited and perhaps very superficial experience, when a panel of jurors has been dismissed there is a reason for it, and normally the reason is for a mistrial.

Now, I would like for your Honor to advise counsel for the defendants the reason why that panel of jurors was dismissed by your Honor.

THE COURT: I can tell you the reason. I was [illegible], and I thought that this was in the best interests of the defendants, that because of yesterday's

goings on, that there might have been some prejudice generated by the activities that took place in this courtroom that would have worked to the detriment of the defendants, and that is the reason for it.

MS. WILLIAMS: Thank you, sir. I just wanted the reason.

THE COURT: That is the reason.

MS. WILLIAMS: I always appreciate reasons.

THE COURT: Fine.

Yes, Mr. Bloom?

MR. BLOOM: Your Honor, I have an application that this trial be adjourned for the following reason: I should say I am not prepared, totally prepared on what I should be presenting, because I came to work this morning with the understanding that neither defendant will be produced, and it was my expectation that there would be another counsel who, incidentally, was not known to me who in some way had been assigned to represent the co-defendant.

Now, there were articles in all the newspapers and there was television coverage, radio coverage last night and this morning as to the proceedings that took place here yesterday.

I assume that the people who are on the jury panel

to be produced forthwith, I know from what your Honor has just said they were not people who were admonished not to read newspapers, et cetera, with regard to this case. The reason I do not have the clippings now is because I did not think we were --

THE COURT: I will take judicial notice of all the clippings that were in the various papers.

MR. BLOOM: Whenever we proceed I would like to get leave to get hold of them and bring them.

Now, I do make application that this matter be adjourned based on that highly prejudicial publicity in the media last night and this morning.

THE COURT: Well, at the moment I will deny your application. I will make as much inquiry as I can into the jurors' knowledge or acquaintance with whatever has been reported in the papers and see what we can do.

If during the course of the interrogation of the jurors I should find that there is an impossibility of obtaining a fair jury, I will, of course, on application, grant a mistrial.

All right.

MS. WILLIAMS: May I make a statement, sir? I hope --

THE COURT: We have jurors standing outside. I

will permit you, of course, to make a statement, but, on the other hand, I urge you that we have a number of jurors standing out there.

MS. WILLIAMS: Your Honor, I am not as concerned about the number of jurors as I am concerned about the rights of these defendants to have a fair and impartial trial.

I hope the Court will concede that that is my basic responsibility as attorney for the Defendant Chesimard, and I would assume concede that Mr. Bloom would join me in relation to the co-defendant Mr. Hilton.

THE COURT: I think we have a joint responsibility in that --

MS. WILLIAMS: Your Honor, I have a statement to make, and I am simply suggesting to you in the preservation of justice that your Honor listen to me. If your Honor does not want to listen to me then just simply say that you refuse to.

But I simply am asking your Honor to permit me to make a statement.

The statement that I would like to make relates very specifically to what has happened in this Court before your Honor, what has happened in this Court in relation to jurors who have been here, some of whom who have sat there who have heard various statements that were made.

I am urging your Honor at this point -- it may not be timely -- I am aware of the fact that the Court of Appeals of the United States Court for the Second Circuit has denied my motion for an adjournment, but I urge your Honor in the interests of justice, certainly, to

4/ postpone this trial until determination of an eight-count trial in the State of New Jersey, consisting of three counts of burglary and five counts of atrocious assaults, and to just simply -- which is within your Honor's province -- to postpone this particular matter.

Now, I would like to further advise the Court that if your Honor is not willing to do that, if your Honor denies again what you have done, that application, I would like your Honor to know at this moment before the jury is brought in that I will continue to represent the defendant Chesimard; I will continue to take whatever Appellate measures that are necessary, but that if your Honor insists that this trial proceed, being aware of my September 28 letter to you, being aware of all of the applications that I have made to you, that this defendant cannot possibly be prepared, and if you insist that she go to trial, then I want this Court to know that I will stand mute; I will not participate in this trial. I will appear for the Defendant Chesimard, and the defendant will not

permit any other attorney to represent her except me.

THE COURT: Very well. Fine.

I have given careful consideration to this application both now and as previously made, and the application for an adjournment is denied.

MS. WILLIAMS: I hope my exception is noted.

THE COURT: Yes. Yes, it is.

(At 3:05 p.m. the panel of prospective jurors entered the courtroom.)

THE COURT: All right, will you swear the panel.

Do we have all the jurors in?

THE MARSHAL: No. 10 more.

THE COURT: All right.

MR. BLOOM: Apparently there may be room for spectators.

THE COURT: Spectators may be permitted to come in. They will be seated separately from the jurors.

MR. BLOOM: I assume all outside parties are seated separately from jurors.

THE COURT: Well, substantially so.

MR. BLOOM: Well, substantially is different from reality.

THE COURT: All right, are all the jurors seated together now?

MR. MARSHAL: Yes, your Honor.

THE COURT: And they are only seated among themselves, is that correct?

MR. MARSHAL: Except the first row.

THE COURT: Very well, and the rest of the rows are all occupied by jurors?

MR. MARSHAL: Up to here (indicating).

THE COURT: Then the spectators may take their seats behind where the jurors are on my right.

MS. WILLIAMS: Your Honor, I have just received a letter that is very disturbing to me.

THE COURT: Do you want to mark it and hand it up to me so I may read it?

MS. WILLIAMS: Yes. I want this to be an exhibit in this case.

THE COURT: Well, why don't we mark it as an exhibit --

MS. WILLIAMS: Yes. We will call it Exhibit A, B, C --

THE COURT: May I suggest that you give it to Mr. Materise, let him mark it as an exhibit --

MS. WILLIAMS: Who is Mr. Materise?

THE COURT: Mr. Materise is the court clerk.

And will you let me see it.

(Marked Defendant Chesimard's Exhibit A for identification.)

xxx

(Document handed to Court.)

THE COURT: Very well. I am familiar with this.

MS. WILLIAMS: I am sure the Court is familiar with it.

THE COURT: Yes.

MS. WILLIAMS: May I have the exhibit? I would like to have it read into the record.

THE COURT: Well, it is part of the record and I don't think --

MS. WILLIAMS: Now your Honor --

THE COURT: No, I will not permit you to read it into the record in the presence of the jury.

MS. WILLIAMS: In the presence of the jury?

THE COURT: That is right.

You may do it after we have selected the jury.

MS. WILLIAMS: I will accept your Honor's statement.

THE COURT: Very well.

Will you swear the jury.

MS. WILLIAMS: However, sir, I want that statement in its entirety and the time that it was presented to me to be exactly a quarter after 3:00, according

to my watch and 10 after 3:00, according to the clock in the Court, but I want that time recorded as to when I received this notice.

THE COURT: Very well.

MS. WILLIAMS: Sitting at counsel table.

THE COURT: Very well. All right.

We will make a record of it after the jury has been excused for the day.

Will you swear the jurors, please, Mr. Materise.

THE CLERK: Will the jury panel please stand.

(Panel of prospective jurors sworn.)

THE CLERK: Be seated, please.

MR. BLOOM: Excuse me for interrupting, your Honor, I still don't see any spectators. They were all in here before.

THE COURT: Mr. Fitzgerald, are there any further spectators out there?

THE MARSHAL: Yes.

THE COURT: Just a sufficient number to fill the seats.

MR. BLOOM: Well, if there are more than enough to fill the seats -- there are police officers in the back row, and I ask your Honor that they be asked to leave --

THE COURT: No, I am sorry.

MR. BLOOM: -- to either stand on the side or come and sit with the other law-enforcement officers.

THE COURT: No, I am sorry, we will permit the spectators to sit in the seats that remain available.

MR. BLOOM: Your Honor, I was hoping this would be an open trial.

THE COURT: It is an open trial.

Just a sufficient number to fill the remaining seats.

Do you have any objection to my calling the jurors names while --

MR. BLOOM: Your Honor, I would like the spectators to be here during all subsequent proceedings.

THE COURT: Very well.

MS. WILLIAMS: Your Honor, excuse me, I will be back in one second.

THE COURT: I think we are just about to begin, are we not?

MS. WILLIAMS: Your Honor, I need one second, very important.

(Ms. Williams left the courtroom at 3:17 p.m. and returned to the courtroom at 3:20 p.m.)

THE COURT: Are all the seats taken now?

THE MARSHAL: Yes.

THE COURT: All right, call the jurors.

THE CLERK: Juror No. 1, Joanne S. Close.

DEFENDANT CHESIMARD: I would like to know why we were not treated with the same leniency as the Mitchell and Stans case. I would like to know why this Court has repeatedly acted in ways that do not suggest but prove racism.

I would like to know why this Court has been so unfair and insane throughout the proceedings of this trial.

I would like to know what logic, what reason there is in pressing us into a trial we are not prepared for.

I would like an answer from you before anything starts.

Time and time again the attorneys in this case have stated that they are not prepared.

Time and time again you have denied all motions that they have made.

Now, what you are doing is insane. When it comes down to Mitchell you act like an errand boy, and when it comes down to us you act like an executioner. How do you justify that? HOw do you claim that you have the right to sit up there looking like you look and judge us --

THE COURT: Miss Chesimard --

DEFENDANT CHESIMARD: You haven't got enough sense to judge us --

THE COURT: Miss Chesimard, I direct you to remain quiet.

DEFENDANT CHESIMARD: How can you direct me to remain quiet?

THE COURT: Because I have the power to direct you to remain quiet. We are in the process of selecting a jury and I don't want you to interfere with the orderly processes of this Court.

DEFENDANT CHESIMARD: My attorney has suggested that I remain quiet. However, I cannot remain quiet. However --

5/ THE COURT: Well, I suggest that you accept the advice of your attorney.

Call the remaining jurors.

DEFENDANT CHESIMARD: I refuse to remain silent while I am being railroaded, while we are being railroaded --

THE COURT: Will you call the second juror, please.

THE CLERK: Juror No. 2, Ronnie F. Bell.

THE COURT: Call the third juror, please.

DEFENDANT CHESIMARD: Third juror -- you need to stop this case right now. We are not prepared for trial.

THE CLERK: Third juror, Julie DeWitt.

THE COURT: Will you call the fourth juror, please.

DEFENDANT CHESIMARD: I am on trial in New Jersey, they picked me up in New Jersey, brought me up here --

THE CLERK: Margaret Bickel.

DEFENDANT CHESIMARD: -- knowing that you were going to be able to get a conviction or thinking you were going to be able to get a conviction --

THE COURT: Miss Chesimard --

DEFENDANT CHESIMARD: -- on the mere fact that we were not prepared --

THE COURT: Miss Chesimard --

DEFENDANT CHESIMARD: Don't Miss Chesimard me.

The only thing I want to hear from you is this trial will be stopped now.

THE COURT: I direct you --

DEFENDANT CHESIMARD: Don't direct me. You need to direct yourself to have more sense; you need to direct yourself to have some justice. I am going to be the Damn Judge, not you --

THE COURT: Ms. Williams, will you attempt to prevail upon your client to remain silent.

DEFENDANT CHESIMARD: She cannot prevail upon me.

She cannot prevail on me to go along. This is insanity. This is insane, this is wrong, this is injustice. You are a racist and you are --

THE COURT: All right, as gently as you can, please, Marshal --

MS. WILLIAMS: Your Honor --

DEFENDANT HILTON: I am not going to be quiet. She is not ready for trial and I am not ready for trial --

THE COURT: Just a moment --

DEFENDANT CHESIMARD: You are not doing this to me, you are doing this to every citizen in this country if they want to receive a fair trial --

MS. WILLIAMS: Just wait. I have an application to make to the Court.

THE COURT: Ms. Williams, can you prevail upon her to remain quiet?

MS. WILLIAMS: She will move. You don't have to attack her --

THE COURT: All right, Mr. Marshal, as gently as possible, will you remove Miss Chesimard from the courtroom.

MS. WILLIAMS: What are you trying to do to me, man?

Your Honor, I have an application before this Court and I am going to make my application.

THE COURT: Your application will not be made until Miss Chesimard is removed from the courtroom.

MS. WILLIAMS: Why? This defendant --

DEFENDANT CHESIMARD: Because I am black, because I am poor --

THE COURT: Officers, Marshal, as gently as you can.

MS. WILLIAMS: I cannot believe this insanity.

THE COURT: All right, that's it.

Very well.

(Defendant Chesimard removed from courtroom.)

THE COURT: Call the fifth juror, please.

DEFENDANT HILTON: Your Honor, we are not going to proceed with this trial. Time and time again, neither is my co-defendant ready for trial, I am not ready for trial --

THE COURT: Mr. Hilton --

DEFENDANT HILTON: I learn of the name just two days ago --

THE COURT: Mr. Hilton --

DEFENDANT HILTON: And we haven't time --

THE COURT: Mr. Hilton, I direct you to be quiet.

DEFENDANT HILTON: I ain't shutting up --

THE COURT: I direct you --

DEFENDANT HILTON: I am not prepared for trial --

THE COURT: Mr. Marshal, as gently as you can now, as gently as you can, remove him.

DEFENDANT HILTON: We are not going to have a trial. This is a circus. I don't give a fuck.

(Defendant Hilton removed from courtroom.)

THE COURT: Call Juror No. 5. Would you call Juror No. 5, please.

MS. WILLIAMS: Will the Court please hear my application.

THE COURT: Yes? Your application is?

MS. WILLIAMS: If the Court would like for the jurors to be removed during my presentation of the application, that is perfectly satisfactory to me --

THE COURT: No, I --

MS. WILLIAMS: But, sir, I think under the circumstances the application that I have to make not only must be made but, in fact, will be made before this Court. If you want the jurors present it will be made in the presence of these jurors.

THE COURT: No, the application --

MS. WILLIAMS: You know, my arm, in fact, is hurt from the abuse of these people.

THE COURT: I am going to proceed with the

selection of this jury until such time -- and without the presence of Miss Chesimard and Mr. Hilton -- and until such time as they either by themselves or through their counsel will advise the Court that they are willing to come in here and comport themselves properly --

MS. WILLIAMS: If the Court pleases, I am attempting to make an application to you in relation to that situation.

THE COURT: All right, and what is the application?

MS. WILLIAMS: And I just simply don't understand why you arbitrarily refuse me --

THE COURT: What is your application, please?

MS. WILLIAMS: The application, sir, is simply that I be given a few minutes to talk to my client.

THE COURT: All right, very well. We will remain here --

MS. WILLIAMS: That is the only application I wanted to make.

THE COURT: Very well.

How much time will you need?

MS. WILLIAMS: I would say since she is downstairs at this point --

THE COURT: No, she is not downstairs.

MS. WILLIAMS: Five or 10 minutes.

THE COURT: Well, all right, do it as quickly as you can. We have a lot of people here.

MS. WILLIAMS: I have no objection to doing it as quickly as I can.

THE COURT: Very well, you do so.

MR. BLOOM: Your Honor, I would like to do the same.

However, without getting -- I have another engagement at this hour --

THE COURT: I don't think you have to worry about the other engagement that you have. You don't have to worry about the other engagement.

MR. BLOOM: The information has been given? Okay.

THE COURT: I don't think you have to worry about your other engagement.

All right, Ms. Williams, you were going to talk to your client?

MS. WILLIAMS: Thank you, sir.

MR. BLOOM: And may I speak to my client?

THE COURT: Yes, you may.

MS. WILLIAMS: And where is she?

THE MARSHAL: In here.

MS. WILLIAMS: Thank you.

THE COURT: And I would ask both of you to inform

your clients that if they wish to inform the Court that they will behave in the courtroom, that they will be permitted to resume their seats in the courtroom.

MS. WILLIAMS: Yes, that is the only application I wanted to make to your Honor.

THE COURT: Very well.

MS. WILLIAMS: Your Honor was so convinced that I was going to make, you know, an objectionable statement --

THE COURT: Now please.

MS. WILLIAMS: -- that you preceded my statement.

THE COURT: It has been taken care of.

6/ Very good.

MS. WILLIAMS: I simply wanted to talk to my defendant and my client.

THE COURT: All right, you will be given that opportunity.

MS. WILLIAMS: Your Honor, I am just taking her glasses and her papers.

THE COURT: Very well.

(At 3:27 p.m. Ms. Williams left the courtroom and returned at 3:28 p.m.)

MS. WILLIAMS: If the Court pleases, I have made

an application before the Court to speak to my client in private, and I have been advised that there will be two United States Marshals present during that conversation.

May I respectfully request the Court that I be given an opportunity to speak to my client in privacy.

THE MARSHAL: Your Honor, it won't take but one minute to get down to the counsel room. It won't be any trouble at all.

THE COURT: All right, will you go with the Marshal, Ms. Williams. Go right ahead.

MS. WILLIAMS: It is unbelievable.

(Ms. Williams left the courtroom at 3:30 p.m.)

(Recess.)

(In the courtroom -- Defendants and counsel present.)

THE COURT: Mr. Reporter, in your absense Ms. Williams just indicated that she appreciated the Court's giving her the time that she had, and she accomplished what she had to do.

All right.

MS. WILLIAMS: I would prefer to have it said the way I said it, but I think that your Honor's brief statement is perfectly adequate.

THE COURT: All right, are we prepared to proceed?

Call the next juror.

MS. WILLIAMS: Your Honor, I have an application on the part of the defendant Chesimard. If the Court would prefer that the jury be excused during my application, then I would suggest that you do so.

If you do not --

THE COURT: If you want to make your application at the side bar I will take it here.

MS. WILLIAMS: Yes.

THE COURT: All right. The defendants do not have to be present.

(At the side bar.)

MS. WILLIAMS: Your Honor, I felt in all fairness-- I wanted to do this outside -- I have had an opportunity to talk to Miss Chesimard and I have advised that the Defendant Chesimard to remain silent; I have advised her to behave, and she has stated to me she will do so if she feels she can, and I simply in all honesty want your Honor to know that.

THE COURT: Do the utmost that you can.

MS. WILLIAMS: Very well.

THE COURT: Mr. Bloom, did you have the same -- I don't know what you can do -- I urge you to do what you can -- the interests of your clients are both at stake,

and their behavior --

MR. BLOOM: I spent a lot of time talking to Mr. Hilton and I explained to him and he explained his position to me.

THE COURT: All right.

(End of bench conference.)

THE COURT: All right, proceed with the calling of the jury.

THE CLERK: Juror No. 5 is George Santiago.

Juror No. 6 is Victoria Acosta.

Juror No. 7 is Karen J. Purdie.

DEFENDANT CHESIMARD: Judge, I just cannot sit here and --

THE COURT: Juror No. 7, I believe you will find it easier to sit in that row.

Call the next juror.

THE CLERK: Juror NO. 8 is Mario Devoe.

DEFENDANT CHESIMARD: This trial just cannot go on because we are not ready.

THE COURT: Call the next juror, please.

DEFENDANT CHESIMARD: We are not ready.

We have no business being on trial --

THE CLERK: Grace Newton.

DEFENDANT CHESIMARD: You have no right to preside

over this trial. You gave Mitchell and Stans all kinds of delay --

THE CLERK: Juror No. 10, Minna E. O'Byrne.

DEFENDANT CHESIMARD: Both our lawyers tell me we are not prepared to go to trial.

THE CLERK: The next is Minna E. O'Byrne.

DEFENDANT CHESIMARD: Sure it is not considered justice --

THE CLERK: Juror No. 11 is Anna Figueroa.

DEFENDANT CHESIMARD: There can be no trial under these conditions. These people are --

THE CLERK: Juror No. 12 is David Gonzales.

DEFENDANT CHESIMARD: We are not prepared and we are not going to trial unless -- we are not going to trial unless we are prepared. This is a serious injustice --

THE COURT: Miss Chesimard --

DEFENDANT CHESIMARD: Don't Miss Chesimard me. I know the methods you use. I know you are an agent, I know you are an agent of the CIA --

THE COURT: I order you to be silent.

DEFENDANT CHESIMARD: -- preserving big business, and you have no concern for justice or for black people or for poor people or for any defendant except for Mitchell and Stans --

THE COURT: Miss Chesimard, I direct you to remain silent.

DEFENDANT CHESIMARD: You will direct me to do nothing, and I direct you to get down --

I direct you to go jump out of that window --

THE COURT: Do you refuse to remain silent?

DEFENDANT CHESIMARD: Do I refuse to remain silent? Of course I refuse to remain silent.

THE COURT: Ms. Williams, is there any way you can prevail on your client to remain silent? Ms Williams?

MS. WILLIAMS: I beg your pardon?

THE COURT: Do you believe there is any way you can prevail upon your client to remain silent and behave herself in this courtroom?

DEFENDANT CHESIMARD: Yes, there is a way. You stop this trial.

THE COURT: I am asking Ms. Williams.

DEFENDANT CHESIMARD: Then I will be silent.

MS. WILLIAMS: Your Honor --

THE COURT: I don't like to take the alternate remedies that are available to me, and they have been fully explained before, but if it is necessary, why, we will do it.

DEFENDANT CHESIMARD: We have a right to a fair

trial, not just any kind of trial or any kind of railroad that you --

THE COURT: Miss Chesimard --

DEFENDANT CHESIMARD: Don't Miss Chesimard me. The only thing you can say to me is that this trial is adjourned --

THE COURT: Miss Chesimard, I am going to have you removed from this courtroom, and when you are able to tell me -- when you are prepared to tell me --

DEFENDANT CHESIMARD: This is wrong, it's nothing; this is a railroad --

THE COURT: If you can come back and behave yourself--

DEFENDANT CHESIMARD: While I am being railroaded--

THE COURT: -- then you will be permitted to return to this courtroom.

You may communicate that to me directly or through your attorney, but until I hear from you to the effect that you are going to behave yourself in this trial, you will be --

DEFENDANT CHESIMARD: Behave myself? You behave yourself. You act like you have some sense, since you have not acted --

MS. WILLIAMS: (To the Marshal) When the Judge orders her removed you can remove her and not before.

That is not your prerogative.

THE COURT: Ms. Williams. Ms. Williams, now I know --

MS. WILLIAMS: If your Honor is directing that this defendant be removed --

THE COURT: I am --

MS. WILLIAMS: -- then I want that direction on the record.

THE COURT: I am directing --

MS. WILLIAMS: I am also requesting that your Honor direct that this defendant be removed as peaceably and as quietly --

THE COURT: And that has been done.

MS. WILLIAMS: -- and as solicitously as possible, because she is a sick woman.

THE COURT: Very well.

MS. WILLIAMS: So that when I put my hand up it is in protection of my client and for no other reason.

THE COURT: My suggestion to you --

MS. WILLIAMS: However, may I request the Court at least to listen to my application.

THE COURT: May I suggest -- just a moment -- Miss Chesimard is interfering with the orderly procedures of this court --

DEFENDANT CHESIMARD: The orderly procedures? What about justice? Have you ever heard that word?

THE COURT: If you will rise and walk out peaceably --

DEFENDANT CHESIMARD: You will never make me remain silent, never. There is no justice in America, not for black people, not for poor people, not for anybody except for rich people --

DEFENDANT HILTON: A police informer --

THE COURT: Mr. Hilton, Mr. Hilton, I direct you to be quiet.

DEFENDANT HILTON: There is no possible way to have a fair trial, and I ain't going to be quiet. Fuck you man--

THE COURT: If you are willing to walk out peaceably --

DEFENDANT HILTON: You ain't going to have no trial. How can we be prepared for trial when I am trying to investigate a witness --

THE COURT: As soon as you are prepared to come back in here and behave yourself you will be permitted --

DEFENDANT HILTON: I ain't going to behave myself if you try to take my life. I will behave myself--

THE COURT: -- you will be permitted to go back

into this courtroom.

(Defendants removed from courtroom.)

THE COURT: Very well, all right, let's proceed.

MR. BLOOM: Your Honor, may I be excused from the courtroom because I cannot represent a client who is not here to assist me in the defense of this case.

THE COURT: No, your application is denied.

Your client by his own acts has shown that he is not able to comport himself in such a manner that this case can proceed in an orderly manner, and I am not going to permit the trial of this case to be frustrated by the acts of people who will have these outbursts. If they are willing to come into this courtroom and sit here and behave themselves they will be permitted to be here, and I suggest that at the conclusion of this day you talk with your client and again prevail upon him to behave himself, and as soon as it is made known to me that he will comport himself in accordance with orderly procedures, he will be permitted back in this courtroom, and from time to time I will permit him back in this courtroom, and if he behaves himself he will be permitted to remain, but if he is going to make these outbursts, everytime they occur he will be removed from the courtroom--he will be escorted from the courtroom, as he was and

has been today.

MR. BLOOM: May I say this, your HOnor?

THE COURT: Yes?

MR. BLOOM: I have a few minutes ago discussed with Mr. Hilton the very issues you are talking about, and he has indicated to me that he will, indeed, comport himself properly in this courtroom at a time he is in this courtroom and his counsel and co-counsel are, in fact, given the opportunity to properly prepare the defense of this matter. That is his position.

THE COURT: Well, if that is his position, Mr. Bloom, all I can tell you is that that is a legal matter that you have presented to me and I ruled upon it.

MS. WILLIAMS: Your Honor --

THE COURT: Ms. Williams?

MS. WILLIAMS: Outside of being totally exhausted by these various incidents, may I respectfully suggest to the court that when you use the term "good behavior," and "good conduct," and "behaving yourself properly," that the Court please take cognizance of the fact that the Defendant Chesimard is on trial for her life in the State of New Jersey; that she is in preparation of that trial, and that I am her attorney for that trial and in that trial, and various motions have been made to your Honor

requesting your Honor's acceptance of the urgencies of judicial matters, which I think your Honor is well aware of.

Your Honor, approximately 20 minutes ago I spoke to the Defendant Chesimard. I speak only for her. At that time she told me that she was willing to abide by the rules of the Court to the best of her ability, and I believe I communicated that statement to you.

Apparently the Defendant Chesimard does not feel that she can sit here and be judged impartially, honestly, and with the kind of preparation that is needed for her to stand trial.

There is no objection to appearing before this Court on the indictment that has been presented and about which she has been arraigned.

Your Honor, the only question is in her own mind, and the only reason that I must say this in defense of this defendant, that the Court knowing that she has multiple indictments, that even your own assistant U.S. Attorney has suggested that there is no bail in Jersey; she has indictments in the Eastern District --

THE COURT: Ms. Williams --

MS. WILLIAMS: Your Honor, I insist on completing my statement.

THE COURT: No, I think you have gone as far as I am going to permit you to do.

MS. WILLIAMS: I want to explain to your Honor the attitude and the frame of mind and a concept that eminates from the defendant that I represent.

I would hope the Court should like to know that.

THE COURT: I do, and this is the legal matter upon which I passed, and I have made my ruling.

Now we are going to proceed with the selection of this jury, and I suggest to you, as I did to Mr. Bloom, that at the conclusion of today's proceedings you will be given an opportunity to discuss at length, if you wish, with Miss Chesimard, and you communicate with her the Court's willingness to have her come back to this courtroom as soon as she demonstrates or indicates --

MS. WILLIAMS: Your Honor --

THE COURT: -- that she is willing to behave herself.

MS. WILLIAMS: In the event that she will not in quotes "behave yourself," I would like to know what your Honor's position will be.

THE COURT: My position will be that we will try from time to time to see if we can proceed, and if she

can't comport herself in here properly, and if there is any further outbursts, she will be removed from he court --

MS. WILLIAMS: That she will be what?

THE COURT: That she will be removed from the court.

MS. WILLIAMS: That she will be removed from the courtroom? That is your Honor's position?

THE COURT: Yes, unless she wishes to exercise the other option which I indicated to you is available.

Now I am going to ask the jurors -- I am going to ask all of you, both those in the jury box now and the other members of the jury who are sitting in the back of the courtroom to pay careful attention to the statements that I am about to make to you and to the questions that I am going to address generally to you as well as individually to those who are in the jury box.

8 It is entirely likely, and most probable, as we proceed here those of you who are presently seated in this box may be replaced by others who are sitting in the back of the courtroom, and rather than going through the procedure of asking those of you who take the places of the jurors in here the same individual questions, I am merely going to ask you if you have heard the statements that I have made and the questions that I have addressed to the other

jurors, and if there is anything about any of those statements or any questions, or any other matter pertaining to your qualifications to sit as a juror in this case, that you should bring it to my attention --

MS. WILLIAMS: If the Court pleases, there are no statements that have been made that I have been aware of to any jurors in this case --

THE COURT: Ms. Williams, I am in the process of interrogating this jury --

MS. WILLIAMS: Your Honor, I might take exception --

THE COURT: Ms. Williams --

MS. WILLIAMS: Your Honor, I am taking exception to this court's continuation of this trial without determining, first of all, in view of the defendants' position indicated by their behavior, of what your particular attitude and what your position is going to be in relation to them --

THE COURT: All right --

MS. WILLIAMS: I do not feel that it is --

Well, we will not talk about justice -- I think your Honor has an obligation to make a decision.

Bring them in here gagged down and shackled, or say they will not be present in this court, so that

defense counsel can know what to do, how to discuss what is happening in this case with their clients --

THE COURT: Ms. Williams --

MS. WILLIAMS: Sir, I mean they are just simply out of here. It is your responsiblity to make a decision.

THE COURT: Ms. Williams, you have made your objection. I have indicated to you that they will be removed from the courtroom, and that is the procedure I am going to follow at this time in view of their behavior. Now, please.

MS. WILLIAMS: How are they going to understand everything that is going on?

THE COURT: That is a matter that they have elected by reason of their behavior --

MS. WILLIAMS: They have not so elected --

THE COURT: Well, that is a legal question.

MS. WILLIAMS: Your Honor, I state that your removal of their presence from this courtroom is basically and so elementarily unconstitutional --

THE COURT: Very well --

MS. WILLIAMS: -- that it is difficult for me to sit here and listen to your Honor address this panel or any other panel in relation to the legal aspects of this case --

THE COURT: Ms. Williams --

MS. WILLIAMS: We are not concerned about anything that somebody --

THE COURT: Ms. Williams, I indicated to you before that in the event you have an objection you would make your objection on the record --

MS. WILLIAMS: I have made it on many records, have I not?

THE COURT: I want no further statements, please. Will you please be seated.

MS. WILLIAMS: Your Honor --

THE COURT: Ms. Williams, will you be seated.

MS. WILLIAMS: Your Honor --

THE COURT: You have made your objection. Will you please be seated.

MS. WILLIAMS: Your Honor --

THE COURT: Will you please be seated.

MS. WILLIAMS: I will not be seated without the presence of the defendants whose lives, whose liberty is in jeopardy in this case without their presence in this court --

THE COURT: Ms. Williams --

MS. WILLIAMS: I will not be seated and I will not listen to any statement made by this Court --

THE COURT: Ms. Williams, will you be quiet.

MS. WILLIAMS: I am perfectly aware, your Honor -- I am perfectly prepared to be quiet --

THE COURT: Very well.

MS. WILLIAMS: -- but I will not be seated.

THE COURT: You will remain standing if you prefer and be silent.

MS. WILLIAMS: I will not remain standing either. I think your Honor is aware of that.

THE COURT: As I said, members of the jury, I want you to listen to what I have to say here -- Ms. Williams -- Marshal, lock that door, please. I don't want anybody to leave this courtroom.

Ms. Williams, have you elected not to -- everybody remain seated, please. Everybody remain seated, please. Remain seated, please. Everybody remain seated.

MS. WILLIAMS: I will not sit, your Honor.

THE COURT: Ms. Williams, are you going to continue your representation of Miss Chesimard in this case?

MS. WILLIAMS: I will defend the Defendant Chesimard, your Honor --

THE COURT: I can't hear you.

MS. WILLIAMS: I will defend the Defendant Chesimard until she, in fact, replaces me. I will not have her discussed or any presentation made as to legal matters related to her in her absense.

THE COURT: I direct you to return to the counsel table.

MS. WILLIAMS: I will not return to the counsel table --

THE COURT: Ms. Williams --

MS. WILLIAMS: -- under these circumstances --

THE COURT: Ms. Williams, your failure --

MS. WILLIAMS: -- unless the defendant Chesimard is here to listen --

THE COURT: Ms. Williams, your failure to obey my instructions may result in your being cited for contempt.

MS. WILLIAMS: I am aware of that.

THE COURT: Do you wish to purge yourself of the possibility of being held in contempt?

MS. WILLIAMS: I will purge myself, your Honor, of nothing except a proper defense of my client.

THE COURT: I direct you to return to the counsel table.

MS. WILLIAMS: I will do anything, you know, to purge myself of an improper defense of my client.

THE COURT: Will you return to the counsel table?

MS. WILLIAMS: I will not, your Honor, sit at that counsel table in the absense of the defendant.

THE COURT: Do you have anything to say in defense of your contumacious conduct in this court?

MS. WILLIAMS: Of the what?

THE COURT: Of your contumacious conduct in this court?

MS. WILLIAMS: I do not accept your characterization of my conduct as contumacious.

THE COURT: I find that you have failed to obey the legal order and directive of this Court, and I therefore, hold you in contempt.

Ms. Williams, return to the counsel table.

Ms. Williams --

MS. WILLIAMS: I heard you, your Honor.

THE COURT: -- return to the counsel table.

MS. WILLIAMS: I will not, unless the Defendant Chesimard is present with me at the counsel table. At that point I will return.

THE COURT: The Defendant Chesimard will be present at the counsel table whenever she has indicated she

will comport herself in such a way that this Court may properly proceed with the business before it.

MS. WILLIAMS: Well, then, I would suggest that your Honor give me an opportunity to again discuss with my client whether she can, in fact, comport herself, as your Honor calls it, in good behavior.

THE COURT: All right.

MS. WILLIAMS: I will not participate --

THE COURT: All right, you may have five minutes in which to talk to her.

THE MARSHAL: Ms. Williams, down this way.

MR. BLOOM: May I be excused to stand right outside in the hallway? I have always been available. I will be right outside the door.

I will stay here if you wish, --

THE COURT: All right, you may.

All spectators who wish to leave, may do so.

(At 4:05 p.m. a recess was called.)

(At 4:18 p.m.)

THE COURT: Members of the jury, we may be here for just a few more moments, and I know it is uncomfortable for you to sit in the positions that you have. I have made arrangements for the Marshals to have the quarters immediately outside the courtroom just for your

use. Also, so those of you who would like to go out and stretch your legs for a moment, or those of you who must smoke a cigarette, you are permitted to do that.

Let me suggest that only the jurors stay in the corridors out there, and don't discuss in any way anything that transpired in this courtroom. I will give you further instructions about that, but in a moment we are going to take a few minutes break and give you a chance to stretch your legs. Just the jurors alone. And the spectators will remain in the courtroom and remain seated in the courtroom.

Everybody except the jurors remain seated in the courtroom.

(Recess.)

(4:40 p.m.)

THE COURT: Members of the jury, this has been a long session. You have sat here very patiently. We are at this time going to adjourn for the day, 20 minutes to 5:00, and we are going to resume at 9 o'clock tomorrow morning.

I am informed that it is your usual practice to report at 9 o'clock every morning to the jury room so it won't be a hardship for you, but I am going to ask you jurors to report here in this courtroom at 9 o'clock.

Those of you jurors who are presently seated in the box, don't worry that you have forgotten which seats you are in. We do have a list here of what seats you are in, but do report here, and all of the other jurors will report to the courtroom, and we will take the roll at 9 o'clock and start our proceedings after we call the roll at approximately 9:30 or as soon thereafter as we have completed all of that.

Now, I want to instruct you, particularly, at this time, and those of you who have had jury service before have been instructed about it, but I do not want you to take it mechanically. The case is to be determined by the legal evidence that is presented in court.

That is, through the witnesses, the sworn testimony of the witnesses and the documents that are admitted into evidence.

You have not heard a single word of testimony in this case. What has transpired here is not to be taken by you in any way as any indication of how you might or might not decide this case.

In a court of law the guilt or innocence of the defendant on trial is to be determined solely upon the legal evidence presented, and that is the sworn testimony of witnesses, the documents, and such of the rules

of law as the Judge instructs you.

So I can't caution you enough that that is the only basis upon which you are to determine a case, if you are selected, not only in this case but in every other case in which you sit as a juror.

Now, it is entirely possible that there may be some items of publicity about this case, and what transpired today. I am asking you to make every effort to avoid -- and I am directing you, each one of you, not to read any accounts of what transpired here today. Actually, you were witnesses to what has happened here today, so I do not want to say that that would influence you by doing that, but there may be other items that appear in newspaper articles, television coverage or radio coverage, and I can't urge you strongly enough not to do that, not to read them and not to listen to anything.

That is your solemn obligation as a juror, and I am directing you -- and this is a court order to each and every one of you -- not to read, listen or see anything with respect to this matter that is on trial here before me.

If any members of your family or any of your friends or anybody that you are familiar with starts to

discuss it with you, I direct you to forthwith cease any such discussion with respect to this matter.

I don't know how strongly I can impress upon you--and my repetition of it is not going to be anymore than what it was, but it is important that you adhere to these instructions.

I ask you all to be as prompt as possible tomorrow morning. You can see that we have approximately 100 jurors assembled here and other court personnel, and there are other things involved. Make every effort to be on time. I am aware that sometimes there are tieups on transportation facilities, and so on, but I ask you to make a special effort to be on time, because there are so many of us involved and we cannot commence our proceedings until everybody is here present.

So please make a special effort tomorrow to be here on time and we will proceed with the selection of the jury in this case.

Don't make up your minds about it at all; don't form any opinions whatsoever about this case.

Have a pleasant evening and we will see you in the morning.

Now I am directing that only the jurors may leave this courtroom and that no one else may leave this

courtroom until all of the jurors have filed out of the courthouse, not only of the third floor but out of the courthouse.

Have a pleasant evening and we will see you in the morning.

MS. WILLIAMS: Your Honor --

THE COURT: Just a minute. The jurors have not filed out of the courtroom.

MS. WILLIAMS: I will wait until all the jurors file out.

THE COURT: I am just waiting until all the jurors file out of the courtroom.

MS. WILLIAMS: Thank you, sir.

9/

THE COURT: All right, all the jurors have left the courtroom. Will you close the courtroom doors, and will somebody inform me after all of the jurors have left the courthouse.

Yes, Ms. Williams?

MS. WILLIAMS: Your Honor, it's a very simple application.

I understand that co-counsel has other commitments. At this point my application was for permission for a joint conference immediately, but since he has other commitments, I would like to request the Court for a joint conference in the morning as early as possible prior to our appearing here.

THE COURT: A joint conference among whom?

MS. WILLIAMS: I beg your pardon?

THE COURT: A joint conference among whom?

MS. WILLIAMS: A joint conference between the defendant, Freddie Hilton, and the Defendant, Joanne Chesimard, since, as your Honor very well knows, I cannot speak toboth of them at one time without the presence of his attorney, and since he has other commitments which would prevent --

THE COURT: Mr. Bloom?

MR. BLOOM: This evening I have to be elsewhere,

your Honor. All we are asking for is tomorrow morning perhaps the defendants could be brought a little bit earlier so that we could, the four of us can meet downstairs. That is all.

THE COURT: All right.

MR. BLOOM: It's critical for us to do it.

THE COURT: I just want to find out time-wise. That is all I am trying to find out.

All right, if you will report to the Marshal's office, Mr. Bloom and Ms. Williams, on the ground floor, the lower lobby at the Marshal's office at 9 o'clock, they will make arrangements for a joint conference.

MS. WILLIAMS: But your Honor has directed the jurors be here. May I assume that we will be given time?

THE COURT: The jurors are supposed to be here at 9 o'clock. It's going to take us about a half hour to call the roll.

MS. WILLIAMS: All right.

THE COURT: All right.

MS. WILLIAMS: I just want the record clear. I am not trying to hassle the Court.

THE COURT: You can be here at 9 o'clock, and within a few minutes of that one way or the other, you will be available to have a joint conference.

MR. BLOOM: Would your Honor direct -- it's very simple -- would your Honor direct that if either Ms. Williams or myself are a little bit late, that three people can begin the joint conference?

It may be myself tomorrow morning who may be delayed. I have a lot of commitments.

THE COURT: That can be arranged.

There is no problem about that.

There is no difficulty.

As long as your clients are content that you may talk with the other attorney in the absense of yourselves, that is a matter that you have to take up. I might advise these defendants that each one of them has a Constitutional right to be independently represented by counsel, and that talking to opposing counsel, they may very well compromise their own constitutional guarantees, but that is --

MS. WILLIAMS: I agree with your Honor's decision.

THE COURT: All right, so you advise Miss Chesimard and Mr. Hilton that they may talk to other counsel and that that may in fact jeopardize their rights to impartial representation of counsel.

MS. WILLIAMS: That's correct, sir.

THE COURT: All right.

MR. BLOOM: Your Honor, the only thing they are concerned about is having a trial before they are --

THE COURT: All right, I am aware.

I guess everytime we go over it again --

MR. BLOOM: I won't elaborate on it.

THE COURT: You have made the motion.

I have passed on it.

You have preserved your rights, and that is the way it is.

Now, just one or two other, I hope we can make them very short items. Incidentally, you are both directed to be here in Court tomorrow morning at 9:30.

MS. WILLIAMS: I accept the Court's direction.

THE COURT: Very well.

MS. WILLIAMS: However, may I point out to the Court that I will not accept the direction from the Court that I received at 12:30 directing me to be here at 2 o'clock, as I did today.

THE COURT: I am going to get to that in just a moment.

Just so that the record is clear, incidentally, do you want Mr. Jacobs to be present at that conference tomorrow?

MS. WILLIAMS: Who is Mr. Jacobs?

THE COURT: Mr. Jacobs is imminent counsel sitting over there.

MS. WILLIAMS: Oh, yes.

Your Honor, I am the Defendant Chesimard's attorney.

THE COURT: If you want Mr. Jacobs, Mr. Jacobs will be available to be present.

MS. WILLIAMS: He will be available for nothing, because if I am not the defendant's --

THE COURT: Mr. Jacobs, I suggest that you be here at 9 o'clock tomorrow morning.

MS. WILLIAMS: He can be here or not be here, sir. I will either be her attorney or she will be her own attorney.

THE COURT: All right, very well.

MR. BLOOM: Your Honor, I have consulted with my client and at the same time the co-defendant overheard, and each has indicated, with all due respect to Mr. Jacobs, that they do not wish him to be present.

THE COURT: Very well. Is that so, Miss Chesimard?

MS. WILLIAMS: At the joint conference, absolutely.

THE COURT: You do not want him to be present?

MS. WILLIAMS: Absolutely, sir. This man --

THE COURT: Please, Ms. Williams, I have to get this.

MS. WILLIAMS: I am sorry.

THE COURT: Mrs. Chesimard, you do not wish to have Mr. Jacobs present at that conference?

MRS. CHESIMARD: Or any conference.

MS. WILLIAMS: Absolutely not, sir.

THE COURT: Fine, that is all I want to find out.

Ms. Williams, to clear up the record, you have presented here Defendant's Exhibit A for identification which is dated December 5, 1973 on my letterhead addressed to you.

MS. WILLIAMS: Which is today.

THE COURT: "Please be advised that the trial of your client, Joanne Chesimard, indictment No. 73 Cr. 572 will continue at 2 p.m. this afternoon, Wednesday, December 5, 1973 in the courtroom 318, United States Courthouse, Foley Square, New York, N.Y. Judge Gagliardi has directed me to inform you that you are required to be present in court at that time.

"Very truly yours, Mark Adelson, Law Clerk."

Ms. Williams, that Exhibit A was delivered to you by the Marshal today because --

MS. WILLIAMS: May I indicate the time that that

letter was delivered to me?

THE COURT: Yes.

MS. WILLIAMS: It was approximately 2:30.

THE COURT: There is an affidavit of return of service by the Marshal.

MS. WILLIAMS: At the time that letter --

THE COURT: Ms. Williams, yesterday when we adjourned --

MS. WILLIAMS: I got the letter today.

The man gave it to me. Whether he was a Marshal from this Court or any other Court, the man gave it to me, at which point I pointed out to your Honor in the fairness of this record --

THE COURT: Ms. Williams, all I want to tell you is that yesterday the Court adjourned until 10 o'clock this morning. At 10 o'clock this morning --

MS. WILLIAMS: Not in my presence. Not in my presence.

THE COURT: At 10 o'clock this morning you were not here.

MS. WILLIAMS: In my presence the Court was not adjourned.

THE COURT: We promptly called your office and left word.

MS. WILLIAMS: At what time?

THE COURT: At about 10 minutes after 10, quarter after 10, somewhere between 10 and 10:30.

MS. WILLIAMS: It was 11:30.

THE COURT: Inquiring as to why you were not here and directing that you be here at 2 o'clock.

To be certain that that message was received by you, I directed my law clerk to have delivered by the Marshal this Exhibit A, which was done.

MS. WILLIAMS: At 2:30 I was in court.

THE COURT: All right, we will adjourn until 9 o'clock tomorrow morning.

(Trial adjourned to Thursday, December 6, 1973 at 9 a.m.)

Evelyn A. Williams ATTORNEY AT LAW

461 CENTRAL PARK WEST NEW YORK, N. Y. 10025 212 - 866-6641

April 12, 1974

Honorable William Hughes Mulligan
United States Court of Appeals
For the Second Circuit
Foley Square
New York City, New York

RE: GAGLIARDI-PETIONER APPELLEE
v. EVELYN WILLIAMS - RESPONDENT--APPELLANT
Index No. 74-1227

Honorable Sir:

I am enclosing herein a proposed stipulation of the contents of the Appendix related to the above case, pursuant to the direction of the court, granting an extendion of time to file a brief and appendix.

This stipulation was not signed because on the 11th day of April, 1974, when I attempted to obtain the consent of the Assistant U. S. Attorney in charge of this case, Mr. Thomas Day Edwards, he refused not only not to see me, but refused to talk to me via telephone. He advised the receptionist who called him that "he would not talk to me or see me, but to have my attorneys call him."

I am an attorney, appearing "pro se", together with other attorneys, in relation to this appeal. Because of factors and conditions beyond my control, as indicated to the court previously, it has become necessary for me to proceed with perfecting this appeal myself. Mrr. Edwards is well aware of my position as it relates to active legal efforts of the attorneys who represent me.

Since he refuses to see, talk or relate to me in any manner, it is incumbent upon me to advise the court why it is impossible for me to submit a "joint Appendix".

I am, therefore, submitting an appendix, my own, having been precluded from submitting one on consent.

Very truly yours,

Evelyn Williams

EAW:H
nenc

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Index No. 74-1227

In the Matter of Honorable Lee P. Gagliardi, United States District Judge for the Southern District of New York,

Petitioner-Appellee,

Evelyn Williams, Esq.

Respondent-Appellant,

USA,

Plaintiff,

v.

JoAnne Chesimard, et al., Defendants.

STIPULATION OF CONTENTS OF APPENDIX

It is hereby stipulated by and between the United States Attorney's Office for the Southern District of New York and the attorneys for Evelyn Williams, the Respondent-Appellant herein, that the following constitute the Appendix in the above matter:

1. Certified copy of docket entries (A-D)
2. Indictment - Southern District, New York
3. Indictment - State of New Jersey
4. Notice of Appearance - Evelyn A. Williams
5. Affidavit of Writ ad pros - JoAnne Chesimard
6. Order filed that U.S. Marshalls transport Chesimard to U.S. Court House
7. Petition for writ of Mandamus
8. CJA form 20 appointment of counsel, Howard L. Jacobs
9. Certificate of contempt filed against Evelyn Williams
10. Copy of Order of U.S.C.A. and opinion denying writ of Mandamus
11. Motion to set aside and vacate certificate of contempt-Evelyn Williams
12. Certificate of Bail grant
13. Filed memo of law in opposition to judgment of contempt-Evelyn Williams
14. Notice of Appeal - filed by William Kunstler
15. Transcript of Court Proceedings (11-28-73; 12-4-73; 12-5-73)
16. Judgment and Commitment - Evelyn Williams - Gagliardi, J
17. True copy of opinion # 40189 - Gagliardi, J
18. A.U.S. A. Truebner's affidavit in opposition to Hilton's

motion for severance.

DATED: April 11, 1974

UNITED STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK

By:

EVELYN WILLIAMS (pro se)

WILLIAM M. KUNSTLER
Center for Constitution Rights
853 Broadway
New York, N. Y. 10003

HAYWARD BURNS
National Conference of Black
Lawyers
126 West 119th Street
New York City, N. Y. 10026

James Larson
ARTHUR KINOY
National Lawyers Guild
23 Cornelia Street
New York, N. Y. 10014

Attorneys for Respondent-Appellant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

UNITED STATES OF AMERICA : Affidavit In Opposition
73 Cr. 572 (LPG)

-v- :

JOANNE CHESIMARD, :
FREDDIE HILTON a/k/a Jamal
and AVON WHITE a/k/a George, :

Defendants. :

PETER L. TRUEBNER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and as such, I am in charge of the prosecution of the captioned case. This affidavit is respectifully submitted on information and belief unless otherwise stated in opposition to defendant Hilton's oral motion on September 26, 1973, for a severance from co-defendants and for an immediate trial.

2. Indictment 73 Cr. 572, filed on June 13, 1973, charged JOANNE CHESIMARD, FREDDIE HILTON and AVON WHITE, the defendants, with the armed robbery of a federally insured bank in violation of Title 18, United States Court, Sections 371, 2113(a), 2113(d) and 2. With the recent capture of defendant WHITE and his appearance in this court on September 26, all defendants have now been apprehended and arraigned.

3. In addition to the instant indictment, the defendants have been indicted or charged in other jurisdictions with the following serious offenses:

Defendant	Charge	Jurisdiction	Bail Status
a) Chesimard	Murder	New Jersey	Remanded
"	Bankrobbery	E.D.N.Y.	$250,000
"	Felony-Murder	Kings County	Not yet arraigned
"	Kidnapping/ robbery	Kings County	Not yet arraigned
b) Hilton	Attempt Murder	Bronx County	$150,000
"	Attempt Murder	Kings County	$150,000
"	Poss. Dang. weapon	Kings County	$100,000
c) White	Attempt Murder	Bronx County	$150,000
"	Armed Robbery	Kings County	$150,000

Apart from the foregoing, your deponent avers that all defendants are targets in other significent criminal investigations being conducted by law enforcement officials both in the New York City area and elsewhere.

4. Only the defendant HILTON is in federal custody at this time. Moreover, were he to be released in this case without bail, it is clear from the above chart that he would remain in custody until disposition of the local charges. Under these circumstances, it is reasonable to delay his trial until such time as he can be tried jointly with his co-defendants, one of whom (CHESIMARD) is scheduled to stand trial on October 9, 1973 in New Jersey on charges of fatally shooting a state trooper and the other of whom (WHITE) has just been apprehended

5. The Southern District of New York "Plan for Achieving Prompt Disposition of Criminal Cases," which superceded the Second Circuit Rules for the same purpose effective April 1, 1973, see Hilbert v. Dooling , 476 F. 2d 355 (2d Cir. 1973), provides for the exclusion of certain periods from the time within which the Government need be ready for trial. Among the rules applicable to the instant case are Rule 5(b) [the defendant CHESTWARD has requested a continuance to allow the New Jersey prosecution to proceed]; Rule 5(c) (ii) [the prosecuting attorney is preparing the case for trial and additional time is justified by exceptional circumstances, to wit, the multi-district litigation involving all defendants]; and particularly Rule 5 (e) [The defendant - in this case HILTON - is joined for trial with a co-defendant (WHITE) as to whom the time for trial has not run].

6. Prompt Disposition of criminal case rules were not intended to "straightjacket" the administration of justice nor "to place obstacles" in the path of legitimate law enforcement. United States v. Pierro, 473 F. 2d 386 (2d Cir. 1973).

7. There is a compelling public interest in avoiding unnecessary duplication of proof and expense in conducting a series of trials where persons have been indicted jointly for the crime of conspiracy and substantive offenses. In the instant case, the Government's proof, witnesses and evidence will be substantially the same against all defendants. Absent a provable claim of

evidentiary matters justifying a severance, defendant HILTON's application for severance fails on the merits. Indeed, stripped to its essentials, defendant's motion is simply a bold, uncorroborated attempt to secure an independent trial in an atmosphere more favorable than that which he believes will result from a joint trial with unattractive co-defendants. Such grounds are legally and factually insufficient to warrant severence.

WHEREFORE, for the foregoing reasons it is respectfully prayed that defendant HILTON's motion for a severence and immediate trial be denied.

PETER L. TRUEBNER
Assistant United States Attorney

Sworn to before me this
1st day of October, 1973.

UNITED STATES DISTRICT COURT
CHAMBERS OF
JUDGE LEE P. GAGLIARDI
UNITED STATES COURT HOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

November 21, 1973

TO ALL COUNSEL:

Re: U.S. v. Hilton, Chesimard, White

Judge Gagliardi has instructed me to inform you that the trial of the above-captioned matter is scheduled for December 10, 1973 at 10 A.M. in Room 1505.

Counsel are advised to be prepared to proceed at that time.

Sincerely,

Marc Adelsohn
Law Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel. JUDGE LEE P. GAGLIARDI, Appellee,	AFFIDAVIT
v.	Docket No. 74-1227
EVELYN A. WILLIAMS, ESQ., Appellant.	

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

THOMAS DAY EDWARDS, being duly sworn, deposes and says:

1. I am the Chief of the Criminal Division in the United States Attorney's Office for the Southern District of New York, and am the Assistant United States Attorney presently in charge of handling this appeal. I submit this Affidavit in opposition to defendant-appellant's motion for an adjournment of thirty (30) days to file the Brief herein.

2. The Affidavit in support of this motion for an adjournment relies principally upon the fact that William Kunstler, Esq., one of the numerous attorneys for the defendant-appellant herein, is presently engaged in a case in the United States District Court for the District of South Dakota. Nothing in the moving Affidavit, however, indicates that Mr. Kunstler would be any more available thirty days from now than he is at the present time.

3. Annexed to this Affidavit is defendant-appellant's Notice of Appeal. (See Exhibit A.) Upon this Notice, are listed three individual attorneys, in addition to Mr. Kunstler. Furthermore, it would appear that these attorneys are supported by three organizations presumably containing numerous additional attorneys. The moving Affidavit itself is signed by yet another attorney who identifies himself as "one of the supporting counsel".

4. This is an important criminal appeal because it involves an appeal from a ten-day jail sentence imposed upon an attorney for contempt of Court committed in the presence of the trial Judge.

5. Although the appeal is an important one, I do not believe the legal issues involved are complex, and the record below is not at all an extensive one. I believe the primary issue to be raised is the question of whether the trial Judge was too personally involved in the incident that gave rise to the citation for contempt. That issue has already been briefed extensively by Mr. Kunstler in the trial Court. Annexed as Exhibit B is a copy of the Certificate of Contempt.

6. In any event, it is respectfully submitted that defendant-appellant is apparently represented by numerous other attorneys who are available to file a brief herein, there is no showing that Mr. Kunstler will be available to work on the brief even if the requested adjournment herein is granted, the case is one which should be handled expeditiously, and under all the circumstances, sufficient grounds in support of the motion

for an adjournment have not been set forth.

WHEREFORE, it is respectfully submitted that the present motion should be denied.

Thomas Day Edwards

Sworn to before me this
day of March, 1974.

[illegible]
Notary Public, State of New York
[illegible]
Qualified in [illegible] County
Certificate filed in [illegible] County
Commission expires March 30, 1975

COPY RECEIVED
JAN 14 1974
U.S. ATTORNEY
SO. DIST. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA ex rel. :
JUDGE LEE P. GAGLIARDI :

v. :

EVELYN A. WILLIAMS, ESQ. :

- - - - - - - - - - - - - - - - - - X

73 Cr. 572
73-1490
NOTICE OF APPEAL

Notice is hereby given that EVELYN A. WILLIAMS, ESQ., defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment of HON. LEE P. GAGLIARDI, which sentenced the defendant to a term of Ten days in jail resulting from a Certificate of Contempt issued pursuant to 42(a) of the Federal Rules of Criminal Procedure and Title 18 United States Code, Section 401, issued on the 5th day of December, 1973, entered in this action on the 3rd day of January, 1974.

DATED: January 14, 1974

EVELYN A. WILLIAMS
Office and P.O. Address
461 Central Park West
New York City, N.Y. 10025

WILLIAM M. KUNSTLER
Center for Constitutional Rights
853 Broadway
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JAMES LARSON
ARTHUR KINOY
National Lawyers Guild
23 Cornelia Street
New York, N.Y. 10014

Attorneys for Defendant

TO: PETER TRUEBNER
Assistant United States Attorney
United States District Court
Southern District of New York
Foley Square, New York City, New York

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.	:	
JUDGE LEE P. GAGLIARDI	:	73 Cr. 572
v.	:	
EVELYN WILLIAMS, ESQ.	:	

CERTIFICATE OF CONTEMPT

In accordance with Rule 42(a) of the Federal Rules of Criminal Procedure and pursuant to Title 18, United States Code, Section 401, I hereby certify that I saw and heard the conduct set forth below, which conduct occurred in the actual presence of the Court during the trial of the case entitled United States of America v. Joanne Chesimard, et al., 73 Crim. 572, which trial commenced on December 4, 1973.

I find that the acts, statements and conduct of the counsel for defendant Chesimard, Evelyn Williams, Esq., hereinafter specified, constitute a contempt of this Court and a deliberate and wilful attempt to sabotage the orderly administration of justice; that this misconduct was of so grave a character as to disrupt the proper functioning of this Court. Ms. Williams has, by reason of her conduct, made the maintenance of the dignity of this Court and the preservation of order in the courtroom an exceedingly difficult task. Despite warnings to Ms. Williams to cease this conduct and an explanation of the possible

consequences of her actions, Ms. Williams persisted in her disruptive and contumacious behavior. The potential effects of the continuation of this behavior on the administration of justice in this case necessitate that I deal with Ms. Williams' activities at this time. Inasmuch as no single reference or series of references to the transcript can accurately reflect the extent of Ms. Williams' contemptuous conduct, I hereby make the entire record of the trial a part of these proceedings. In addition to the specific conduct set forth below and in the portions of the transcript appended hereto the Court notes that Ms. Williams has continually, during the course of the trial, conducted herself in a manner at times calculated to display her disrespect for this Court and these proceedings.

Accordingly, it is adjudged that Evelyn Williams, Esq. is guilty of the criminal contempt hereinafter described.

I.

On December 4, 1973, shortly before the conclusion of the Court's afternoon session, the defendant Joanne Chesimard was excluded from the courtroom following a series of outbursts on her part. After the defendant Chesimard was escorted from the courtroom, Ms. Williams engaged in a colloquy with the court concerning the exclusion of the defendant and the court's ruling concerning the form in which objections were to be made in the presence of the jury. During the course of this colloquy Ms. Williams not only

took formal exception to the court's ruling but announced that she would not submit to the direction of the court in this regard. Towards the conclusion of this exchange Ms. Williams, although insisting that she continued to represent the defendant Chesimard, stated that she would not participate further in the proceedings. Having made this statement and despite the explicit direction by the court to remain in the courtroom, seated at the counsel table and a warning by the court as to consequences of her contumacious conduct, Ms. Williams left the courtroom. At the time Ms. Williams absented herself, court was in session and the jury selection was in progress. Shortly after Ms. Williams left the courtroom, the trial was adjourned until 9:30 A.M. the following morning.

Court resumed on the morning of December 5, 1973; Ms. Williams did not appear. Ms. Williams was contacted during the course of the morning and directed to be in court at 2 P.M. During the course of the proceeding, defendant Chesimard was again removed from the courtroom following a repetition of her outbursts of the previous afternoon. After the removal of defendant Chesimard, Ms. Williams again engaged in a colloquy with the court. Ms. Williams told the court that she would not listen to any statement made by the court and despite repeated direction to remain at the counsel table she made her way to the rear door in an attempt to leave the courtroom. At this juncture, the marshalls, acting at the court's direction, locked the exits to the courtroom. The colloquy continued with Ms. Williams standing at the rear door of the courtroom. The court di-

rected Ms. Williams to return to the counsel table; she refused. The court warned Ms. Williams that she would be cited for contempt if she persisted in her conduct; she indicated that she was aware of the possible consequences of her actions. The court offered Ms. Williams the opportunity to purge herself of her contempt; she declined. The court asked Ms. Williams if she had anything to say in defense of her contumacious conduct; she stated that she did not consider her conduct contumacious. At this point, the court held Ms. Williams in summary contempt for failure to obey the legal order and directive of the court.

* * *

In accordance with Rule 42(a) of the Federal Rules of Criminal Procedure and pursuant to Title 18, United States Code, Section 401 I find that Evelyn Williams, Esq. has, by her acts, statements and conduct, committed acts of contempt, constituting a deliberate and wilful attack upon the administration of justice and with the professed intent of disrupting the proper functioning of this court.

So ordered.

U.S.D.J.

Dated: New York, New York
December 5, 1973

Williams v. Cheesman

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 15 day of April, 1974 at No. Foley Sq NY NY deponent served the within ~~Appendix~~ upon Asst. Attorney the appellee herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the appellee therein.

Sworn to before me,
this 15 day of April 1974

Edward Bailey

William Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1975